United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1218

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Pages

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 74-1218, 1265, 1266, 1354, 1438

IN THE MATTER OF THE COMPLAINT
of
COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability.

COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS,
Appellant.

69 Civ. 5303

BINGHAM & COMPANY, et al.,
Plaintiffs-Appellants,
against
THOS. & JNO. BROCKLEBANK, LTD.,
Defendant-Appellee.

70 Civ. 290

KELLER INDUSTRIES INC.,
Plaintiff-Appellant,
against
THOS. & JNO. BROCKLEBANK LTD., et al.,
Defendants-Appellees.

69 Civ. 4644

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JUN 17 1974
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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Direct 264a
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In the Matter of the Complaint of

COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. "NICOLAOS S. EMBIRICOS"—LIMITATION OF LIABILITY.

69 CIVIL 5303

JUDGE FRANKEL

DATE	PROCEEDINGS
Dec. 1-69	Filed complaint—no summons issued.
Jan. 19-70	Filed Claim of Keller Industries, Inc.
Jan. 19-70	Filed ANSWER of claimant Keller Industries, Inc. to complaint.
Jan. 19-70	Filed Claim of Brocklebank & Cunard-Brocklebank Ltd.
Jan. 19-70	Filed ANSWER of claimants.
Jan. 20-70	Filed ANSWER of Bingham & Co. Inc. to complaint.
Jan. 20-70	Filed claims beginning with Bingham & Co. Inc. and ending with Boston Old Colony Insurance Co. (77 in all).
Nov. 16-70	Filed stip & order that 70 Civ 290, 69 Civ 4644 are consolidated for trial purposes only with this action—So ordered—McGohey, J.
Oct. 27-71	Filed Consent Pre-Trial Order. McGohey J.
Feb. 21-73	Filed Stip & Order that Cunard Brocklebank & Co Ltd agents for Thos & JNO Brocklebank ltd may be DISMISSED as a party to this action. (For further details see stip in file room 507.) So Ordered 2-21-73. FRANKEL, J.
Nov. 29-73	Before Frankel, J. Non-Jury trial begun.

Relevant Docket Entries.

DATE	PROCEEDINGS
Nov. 16-73	Filed Opinion #40,017—the complaints of the cargo claimants will be dismissed. The owner's petition will be granted. The charterer will recover its freight charges in the agreed amount of $156,088.88. The charterer will recover from the owner its attys' fees and costs in the amount to be stipulated, as indicated. The shipowner should prepare a proposed decree and undertake to seek the consent of the other parties as to its form for submission to the court as indicated. So ordered—FRANKEL, J. Mailed notices.
Nov. 21-73	Filed Opinion #40017 to CORRECT AN ERROR CALLED TO THE COURT'S attention by counsel for the shipowner, the court's Findings of fact and Conclusions of law dated 11-16-73 are here corrected. The eighteenth line at page 15 reading "here on their expert witness, Captain Maiden who testified is deleted, and there is substituted therefor the words on "Captain Maiden's testimony, it is so ordered. Frankel J. Mailed Notices.
Dec. 4-73	Filed Opinion #40017—to correct an error called to the court's attention by counsel for the cargo claimants, the court's Findings of Fact and Conclusions of Law dated 11-16-73, are hereby corrected. The words "January-April, 1968" appearing at page 20, line 15, are deleted and there is substituted therefor the words "January-May, 1969". So ordered—FRANKEL J. (m/n)
Dec. 28-73	Filed supplemental memorandum—it is believed that this supplemental memorandum may supply counsel with sufficient basis upon which to reach an agreed figure for legal fees & expenses, reserving of course, all rights on appeal from this and other aspects of this court's decision. If such agreement is not forthcoming, the matter

Relevant Docket Entries.

DATE	PROCEEDINGS
	will be referred to a special master to hear and report, etc., as indicated. FRANKEL, J. (m/n)
Jan. 24-74	Filed/Final Judgment—#74,108—ordered that the complaint of Compania Naviera Epsilon, S.A. pltff., as owner of the M.S. "Nicolaos S. Embiricos" for exoneration from liability in the first of the above entitled actions etc. is granted and that the claims filed in the said action, etc. are dismissed—that the complaints of Bingham & Co., et al. pltffs in the second above-entitled action and of Keller Industries, pltff. in the third above-entitled action are dismissed—that the deft-claimant, Thos. & Jno. Brocklebank, Ltd. recover of the pltff. Compania Naviera Epsilon, S.A. in the first of the above-entitled actions legal fees and disbursements as indicated and paid to date to Messrs. Lord, Day & Lord in the amount of $126,368.64 and to Messrs. Hill, Dickinson & Co., of Liverpool, England, in the amount of $9,956.10 making in all the sum of $136,324.74 as indicated—and that said deft-claimant, Thos & Jno. Brocklebank, Ltd. recover from each of the following claimants in the first of the above-entitled actions and pltffs. in the second and third of the above-entitled actions, the amounts set forth as indicated with interest as indicated. FRANKEL, J. Judgment entered—1-25-74. Entered on docket—1-28-74.
Jan. 30-74	Filed pltff's notice of appeal from judgment entered on 1-25-74 as allows the claim of deft-claimant Thos. & Jno. Brocklebank, Ltd. for legal fees and disbursements in the total amount of $136,374.74. Entered on docket 1-30-74. Mailed copies to: Lord, Day & Lord—Bigham, Englar, Jones & Houston—and David P. Dawson.

Relevant Docket Entries.

DATE	PROCEEDINGS
Feb. 15-74	Filed notice of appeal that Bingham & Co., et al. defts-claimants in 69 Civ. 5303 and pltffs. in 70 Civ. 290 from each and every part of final judgment entered 1-25-74 except the portion as indicated. Mailed copies to: Healy & Baillie, Lord, Day & Lord and David P. Dawson. Entered—2-19-74.
Feb. 22-74	Filed Keller Industries Inc. defts-claimants in 69 Civ. 5303 and pltff. in 69 Civ. 4644, notice of appeal from each and every part of final judgment entered 1-25-74 in the above consolidated actions except that portion as indicated. Mailed copies to: Healy & Baillie—Lord, Day & Lord and Bigham, Englar, Jones & Houston. Entered 2-25-74.

Bingham & Co. et al. vs. Thos. & Jno. Brocklerbank Ltd.
70 Civil 290
IN ADMIRALTY
JUDGE FRANKEL

Jan. 23-70	Filed complaint and issued summons.
Nov. 13-70	Filed ANSWER to complaint and counterclaim.
Dec. 22-70	Filed Answer to counterclaim.

Keller Industries Inc. vs. Thos. & Jno.
Brocklebank Ltd. et al.
69 Civil 4644
IN ADMIRALTY
JUDGE FRANKEL

Oct. 23-69	Filed complaint and issued summons & Proc. of Mar. Att. & Garn & Summons to show cause why Intangibles should not be paid into court. Ret. 11-16-69.
Dec. 31-69	Filed ANSWER and counterclaim of Deft Jno & Thos Brockelbank Ltd and cunard.
Jan. 27-70	Filed Pltffs REPLY to the counter claim of Defts Thos & Jno Brocklebank and Cunard Brocklebank Ltd.

COMPLAINT OF COMPANIA NAVIERA EPSILON, S.A.--69 CIV. 5303

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

In the Matter .

of the

Complaint of COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. "NICOLAOS S. EMBIRICOS", for exoneration from or limitation of liability.

COMPLAINT

69 Civ. 5303

- -x

1. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(b) of the Federal Rules of Civil Procedure, as hereinafter more fully appears.

2. At all the times hereinafter mentioned, plaintiff, Compania Naviera Epsilon, S.A., was, and it now is a corporation duly organized and existing under and by virtue of the laws of the Republic of Panama, and at all of said times was the sole Owner and operator of the M.S. "NICOLAOS S. EMBIRICOS".

3. At all of said times, the M.S. "NICOLAOS S. EMBIRICOS" was a Greek flag, dry cargo motor vessel, holding the highest class of hull and machinery of Lloyd's Register of Shipping. She was built in England in 1958 and her home port was Andros, Greece. Her length overall was 469 feet 7 inches, her extreme breadth 61 feet 9 inches and her summer draught, as a closed shelter deck vessel, was 30 feet 1 inch. Her gross tonnage was 8460 and her net tonnage 4964, as a closed shelter deck vessel. Her deadweight carrying capacity as a closed shelter deck vessel was 13050 tons on summer draught.

4. Commencing at or about 0500 hours on April 17, 1969, the "NICOLAOS S. EMBIRICOS" began loading general cargo at Calcutta, India, and continued loading at other ports, the cargo being destined for New Orleans and East Coast United States ports. Plaintiff used due diligence to make the "NICOLAOS S. EMBIRICOS" seaworthy and at and prior to the commencement of the voyage described, she was in fact tight, staunch and strong, fully manned, equipped and supplied, and in all respects seaworthy and fit for the service in which she was engaged.

5. At or about 0800 hours on May 13, 1969, the "NICOLAOS S. EMBIRICOS", still in a seaworthy condition as aforesaid, sailed from the port of Colombo, Ceylon. At or about 0122 hours on May 15, 1969, the vessel stranded on Suvadiva Atoll of the Maldive Islands. Despite the efforts of the vessel's officers and crew, the vessel could not be relieved from the strand and a salvage tug was engaged upon a no cure-no pay basis. After considerable effort extending over a long period of time, the salvage tug was able to salve the stern portion of the vessel and tow it to the Port of Singapore.

6. The following actions have been commenced against plaintiff:

(a) An action in the United States District Court for the Southern District of New York by Bunge Corp. and Gillespie & Company of New York, Inc. who sue to recover for alleged loss of cargo. The attorneys for the plaintiffs are

Bigham, Englar, Jones & Houston and the amount of damages claimed in the complaint is $800,000.

(b) An action in the United States District Court for the Southern District of New York by Keller Industries, Inc. which sues to recover for alleged loss of cargo. The attorney for the plaintiff is David P. Dawson and the amount of damages claimed in the complaint is $72,000.

In addition to the foregoing suits, plaintiff is fearful that other suits may be brought against it and claims asserted by other parties who may have sustained loss or damage by reason of the casualty.

7. The stranding and destruction of the "NICOLAOS S. EMBIRICOS" and the loss of cargo resulting therefrom were caused by error in navigation, Act of God, perils of the sea and/or other cause or causes for which the vessel and/or her Owners are not liable under the provisions of the United States Carriage of Goods by Sea Act and/or the terms and provisions of a certain contract of charter party dated 26th March 1969 between the plaintiff and Cunard-Brocklebank Limited as Charterers of the "NICOLAOS S. EMBIRICOS" and/or the terms and provisions of bills of lading issued by the said Charterers for the cargo carried on the "NICOLAOS S. EMBIRICOS" at the time of her stranding.

8. The casualty and the losses and damages resulting therefrom for which suits have been brought against plaintiff

or claims which may be made against plaintiff and all other damages in any manner arising out of said stranding and destruction were occasioned and incurred without the privity or knowledge of the plaintiff or any of its directors, officers, stockholders or agents, and without the privity or knowledge of a representative or managing agent of plaintiff at or prior to the commencement of the voyage.

9. Plaintiff believes and therefore alleges that the "NICOLAOS S. EMBIRICOS" on May 15, 1969 immediately after the casualty had no value in view of the cost of salvaging any part thereof. Charter hire in the amount of $44,780.46 was earned between the time of the commencement of the loading of cargo at Calcutta and the time of the stranding. Thus, the value of plaintiff's interest in the vessel and charter hire earned on the voyage did not and does not exceed $44,780.46, which value is very substantially less than the amounts of the suits already brought as set forth above and the claims expected.

10. Plaintiff desires to claim the benefit of the provisions of Sections 4283 and 4289 inclusive of the Revised Statutes of the United States (46 USC §§ 183 to 189), and all acts amendatory thereof and supplementary thereto, and in this action, by reason of the facts hereinabove set forth, to contest its liability and the liability of the "NICOLAOS S. EMBIRICOS" to any extend whatever for any and all loss, injury,

expense and damage occasioned or incurred by reason of the casualty, and to that end deposits with the Court security in the amount of $44,780.46.

WHEREFORE, plaintiff prays:

1. That this Court issue notice to all persons asserting claims by reason of any loss, injuries, expenses of damage occasioned or incurred by reason of the casualty hereinabove described, admonishing them to file their claims with the Clerk of this Court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice.

2. That this Court issue its injunction restraining the commencement or prosecution of any or all actions or suits or legal proceedings of any kind arising out of the casualty against plaintiff or against the steamship "NICOLAOS S. EMBIRICOS" other than in the present action.

3. That this Court adjudge that the plaintiff is not liable for any loss, injury, expense or damage or claim whatsoever in consequence of the casualty, or that if such liability ever existed then that it be limited to the value of plaintiff's interest in and to the "NICOLAOS S. EMBIRICOS", together with the freight, if any, pending at the time of the casualty.

4. And for such other and further relief as the justice of the cause may require.

HEALY & BAILLIE

By: Allan A. Baillie

Allan A. Baillie
A Member of the Firm

Attorneys for Plaintiff
29 Broadway
New York, N.Y. 10006
WH. 3-3980

CLAIM OF KELLER INDUSTRIES INC.--69 CIV. 5303

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the	CLAIM OF KELLER INDUSTRIES INC.
Complaint of COMPANIA NAVIERA EPSILON,S.A. Plaintiff, as Owner of the M.S."NICOLAOS S. EMBIRICOS", for exoneration from or limitation of liability	69 Civ. 5303

The claimant, KELLER INDUSTRIES INC., by its attorney David P. Dawson hereby makes claim against Plaintiff COMPANIA NAVIERA EPSILON, S.A., the Motor Ship "NICOLAOS S. EMBIRICOS, its freight, etc., alleging upon information and belief as follows:

1. Claimant, KELLER INDUSTRIES INC. is a Florida corporation with no office or place of business in this district.

2. Claimant was the shipper, consignee and owner of the shipment of cargo as fully set forth in Schedule A annexed hereto which was loaded on board the MS "NICOLAOS S. EMBIRICOS" on or about the date set forth in Schedule A annexed hereto and at the port therein named, in good order and condition for carriage to the port of destination therein named and there to be delivered in like good order and condition as when shipped to the order of the claimant herein, inconsideration of an agreed freight and in accordance with the valid terms of a certain bill of lading then and there signed and issued to the said shipper by duly authorized agents of

the Plaintiff herein, COMPANIA NAVIERA EPSILON, S.A.

3. The shipment of cargo mentioned herein and more fully set forth in Schedule A annexed hereto was never delivered to the consignee or to its order and the said loss was not caused or contributed to by any fault or negligence on the part of the claimant, its servants, agents or employees.

4. Claimant brings this claim on its own behalf and as agent and trustee on behalf of and for the interest of all parties who may be or become interested in said shipment as their respective interests may ultimately appear and claimant is entitled to maintain this action.

5. Claimant above named has filed herein an answer to the complaint on or about January 20, 1970 and the allegations of the said answer are referred to and incorporated by reference herein with the same force and effect as if alleged herein in full.

6. Claimant has duly performed all duties and obligations on its part to be performed.

7. By reason of the premises, claimant has sustained damages, as nearly as the same can now be estimated, no part of which has been paid, although duly demanded in the sum of seventy two thousand Dollars ($72,000).

8. All and singular the premises are true and within the admiralty

and maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, claimant prays that this claim be approved and allowed by the Court with interests and costs in accordance with the rules and practices of this Honorable Court and that a decree be granted in favor of claimant and against the Plaintiff and the said fund and the said stipulators and that a degree be entered denying to the Plaintiff exoneration from or limitation of liability; and that a decree be entered for the full amount of claimant's damages against Plaintiff and against the Fund and stipulators herein and for such further and other relief in favor of claimant as may be just.

DAVID P. DAWSON
Attorney for Claimant,
KELLER INDUSTRIES INC.
Office & P.O. Address
80 Park Avenue
New York, N.Y. 10016
867-9166

To: Healy & Baillie
Attorneys for Plaintiff
29 Broadway
New York, N.Y. 10006

SCHEDULE A

Claim on behalf of Claimant, KELLER INDUSTRIES, INC.

KELLER INDUSTRIES, INC. was and now is a corporation organized and existing under and by virtue of the laws of FLORIDA.

Port of Shipment:	Calcutta
Port of Destination:	Savannah
Shipper:	Raigarh Jute Mills Ltd.
Consignee: Notify	Keller Industries, Inc.
Description of Shipment:	209 Rolls of Hessian Jute carpet backing cloth under bill of ladings 32 and 40 dated on or about April 23-25, 1969
Amount of Loss:	$72,000.

ANSWER OF KELLER INDUSTRIES INC.--69 CIV. 5303

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the	ANSWER OF CLAIMANT KELLER INDUSTRIES INC.
Complaint of COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as Owner of the M.S. "NICOLAOS S. EMBIRICOS" for exoneration from or limitation of liability.	69 Civ. 5303

KELLER INDUSTRIES, INC. answering the complaint herein respectfully alleges on information and belief as follows:

1. It admits the allegations contained in the paragraph of the complaint numbered "1".

2. It denies knowledge or information sufficient to form a belief as to each and every allegation in the paragraphs of the complaint numbered "2", "3", "7", "8", "9".

3. It denies each and every allegation in the paragraphs of the complaint numbered "4", "5", "10".

WHEREFORE, claimant prays:

1. That the petition for exoneration from or limitation of liability on file herein be denied at Plaintiff's cost.

2. That the claim of the claimant, KELLER INDUSTRIES, INC., as owner and consignee of a certain shipment of cargo loaded on board the M.S."NICOLAOS S. EMBIRICOS" be allowed as prayed for.

3. That this Honorable Court will order a judgment and decree that the Plaintiff and its stipulators pay to the claimant KELLER INDUSTRIES INC. the damages suffered by it together with interest, costs, and disbursements.

4. That this court will grant claimant such other, further, and different relief as may be just.

DAVID P. DAWSON
Attorney for Claimant
KELLER INDUSTRIES INC.
80 Park Avenue
New York, N.Y. 10016

TO: Healy & Baillie
29 Broadway
New York, N.Y. 10006

CLAIM OF THOS. & JNO. BROCKLEBANK LTD. AND CUNARD BROCKLEBANK LIMITED--69 CIV. 5303

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability.	CLAIM OF THOS. & JNO. BROCKLEBANK LTD. AND CUNARD-BROCKLEBANK LIMITED 69 Civ. 5303

The claimants Thos. & Jno. Brocklebank Ltd. and Cunard-Brocklebank Limited make claim against plaintiff, Compania Naviera Epsilon, S.A., owner of the M.S. NICOLAOS S. EMBIRICOS, and the freight of said vessel, in this proceeding upon information and belief as follows:

FIRST: Claimants, Thos. & Jno. Brocklebank Ltd. (hereinafter referred to as "Charterer" or "Brocklebank") and Cunard-Brocklebank Limited ("Cunard") are corporations organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland.

SECOND: At all of the times mentioned in the complaint, COMPANIA NAVIERA EPSILON, S.A. (hereinafter referred to as "Owner" or "Plaintiff") was and still is a corporation organized and existing under and by virtue of the laws of the Republic of Panama, and prior to the stranding on or about

May 15, 1969 and subsequent loss of the Motor Ship NICOLAOS S. EMBIRICOS was the owner of that vessel.

THIRD: On or about June 4, 1969, a complaint was filed in this Court by Bunge Corp. and Gillespie & Company of New York, Inc. (hereinafter referred to as "Bunge" and "Gillespie") against plaintiff and Brocklebank, to recover damages in the total sum of $800,000 for alleged damage to various consignments of cargo shipped on the M.S. NICOLAOS S. EMBIRICOS in April and May, 1969, which it is alleged was not delivered at destination but was lost when the vessel stranded on Suvadiva Atoll, Maldive Islands. It is alleged in the complaint of Bunge and Gillespie that damage to and loss of their cargo resulted from the unseaworthy condition of the M.S. NICOLAOS S. EMBIRICOS at and before the commencement of the voyage, existing through lack of due diligence.

FOURTH: On or about October 23, 1969, a complaint was filed in this Court by Keller Industries Inc. ("Keller") against plaintiff, S.G. Embiricos Limited, Brocklebank and Cunard to recover $72,000 for alleged damage and loss of 209 rolls of Hessian Jute Carpet Backing Cloth which was allegedly shipped on the M/V NICOLAOS S. EMBIRICOS in good order and condition on or about April 23-25, 1969 for transportation to the Port of Savannah and not redelivered in like order and condition at said port.

FIFTH: Under date of March 26, 1969, Brocklebank

through its agent, Cunard, time chartered the M.S. NICOLAOS S. EMBIRICOS from owner and entered into a Time Charter (the "Charter") with Owner, the personal contract of Owner, to the original of which Charter Brocklebank and Cunard refer and make the same a part of this their claim. In and by said Charter which was signed for Owner by Panayoti Demetrios Christopolous, a director of S.G. Embiricos Limited as agents for Owner by authority of Owner, Owner personally warranted to Brocklebank and Cunard that the M.S. NICOLAOS S. EMBIRICOS was furnished "... with hull, machinery and equipment in a thoroughly efficient state and classed +100 A.1. at Lloyds Register ... and capable of steaming, full laden under good weather conditions about 13-13 1/2 knots at a consumption of about 16-17 tons of best grade fuel oil ..." and that at the time of her delivery under the said Charter was seaworthy, properly manned, equipped and supplied and in all respects fit and safe for the reception, carriage and preservation of cargo and was "tight, staunch, strong and in every way fitted for ordinary cargo service ... and with full complement of officers, seamen, engineers, and firemen for a vessel of her tonnage" and would be so maintained and kept by Owner thereafter for and during the service under the Charter.

The Charter, the personal contract of Owner, contained among others the following provisions:

"Witnesseth, That the said Owners agree to let,

and the said Charterers agree to hire the said vessel, from the time of delivery, for a trip via safe port(s) including U.S.A. in or out of geographical rotation at Charterers' option within below mentioned trading limits. Charterers are to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party. Vessel to be placed at the disposal of the Charterers ... on taking pilot at a safe port at Colombo/Chittagong range, including E.C. India, at Charterers' option .... Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for ordinary cargo service ... (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise ... within Institute Warranty Limits ... as the Charterers or their Agents shall direct ...

* * *

"1. That the said Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all cabin, deck, engine-room and other necessary stores, including boiler water ... and maintain her class and keep the

vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

* * *

"26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The Owners to remain responsible for the navigation of the vessel, acts of Pilots and Tugs, insurance, crew, and all other matters, same as when trading for their own account."

The M.S. NICOLAOS S. EMBIRICOS was delivered under and entered upon the performance of the aforesaid Charter at or about April 12, 1969, and at all times mentioned herein and prior to her stranding was operated thereunder. Brocklebank performed all terms of the Charter on its part to be performed.

SIXTH: At all times mentioned, Owner was bound by the Charter to have and maintain the Vessel in a thoroughly efficient, tight, staunch, strong, fit and seaworthy condition and properly manned, equipped and supplied. If Bunge, Gillespie and Keller and any other cargo claimants suffered any loss or damage and are entitled to any recovery (which is denied) then and in that case it is because of the unseaworthiness of the vessel and because of the fault and neglect of the Owner, because of the breach of the warranties contained in the Charter, the personal contract of Owner, and

because of the matters for which Owner has assumed liability under the Charter. Any such loss or damage was not due to a cause for which Brocklebank or Cunard is liable and the responsibility, if any, for said loss or damage as between Owner, Brocklebank and Cunard should rest on Owner and if liability for said cargo loss or damage shall be adjudged against Brocklebank or Cunard, then they are entitled to full indemnity for any loss, damage and expenses including but not limited to its reasonable counsel fees from Owner in respect thereof. Brocklebank and Cunard have heretofore duly demanded of Owner that it indemnify them and hold them harmless with respect to any such loss, damage and expense.

SEVENTH: Because of the stranding of the M.S. NICOLAOS S. EMBIRICOS on or about May 15, 1969 and her inability and failure to complete her voyage and deliver at Savannah, Georgia; Charleston, South Carolina; New Orleans, Louisiana; Houston, Texas and Wilmington, North Carolina; quantities of cargo shipped at various ports in India and Pakistan, Brocklebank lost and was deprived of freight monies in the total sum of $148,069.25 which the shippers and/or consignees had agreed to and would have been obligated to pay claimant on delivery of their cargo. Owner had knowledge that sums of money were to be collected by Brocklebank on delivery of said goods. If it be held that the loss of the vessel aforesaid was due to unseaworthiness or any other breach of the Charter, the personal contract of Owner, then

and in that event, Owner is liable to and should be required to pay Brocklebank the sum of $148,069.25 with interest and costs which Brocklebank will have suffered as a result of the breach of the Charter, Owner's personal contract. No credits exist on the above-mentioned claim to recover $148,069.25 and no payments have been made on account of said claim. This claim accrued in or about June, 1969, when the cargo would have been delivered had the vessel not stranded.

EIGHTH: All and singular the premises are true and within the Admiralty and Maritime Jurisdiction of the United States and this Honorable Court.

WHEREFORE, Brocklebank and Cunard pray that they be permitted by this Honorable Court to make due proof of their claims for such loss and damage, if any, as may be recovered against them in the aforesaid actions or otherwise, with interest thereon and all other loss and expense that it may suffer and incur, and that it be ordered, adjudged and decreed:

1. If Bunge, Gillespie, Keller or any other claimant or claimants are entitled to any recovery, Owner is not entitled to limit its liability against them with respect to such recovery and its complaint for limitation of liability should be denied.

2. If Bunge, Gillespie, Keller or any other claimant or claimants are entitled to any recovery

against Brocklebank or Cunard for any loss or damage (which is denied), the complaint for exoneration from or limitation of liability should be denied and Brocklebank and Cunard should recover from and should be fully indemnified by Owner for and with respect to any such loss, damage and expenses, including but not limited to its attorneys' fees.

3. If Bunge, Gillespie, Keller or any other claimant or claimants are entitled to recovery against Brocklebank or Cunard for any loss or damage, irrespective of any right of Owner to limit liability against Bunge, Gillespie, Keller or any other claimant or claimants herein (which is denied), Owner is not entitled to limit its liability as against Brocklebank or Cunard and Brocklebank and Cunard are entitled to recover from and be fully indemnified by Owner for and with respect to any such loss, damage and expense, including but not limited to their attorneys' fees.

4. In any event, Owner is not entitled to limit its liability against Brocklebank or Cunard with respect to all or any loss, damage and expense suffered or incurred by Brocklebank or Cunard, the complaint for limitation of liability should be denied and Owner obligated to pay and to indemnify Brocklebank and Cunard in full for all or any such

loss, damage and expense, including but not limited to their attorneys' fees.

5. If it be held that the stranding and loss of the M.S. NICOLAOS S. EMBIRICOS was due to unseaworthiness or any other breach of the aforesaid Charter, the personal contract of Owner, then in that event, Owner is required to pay and should pay to Brocklebank the sum of $148,069.25, with interest in addition to such indemnity for all or any such loss, damage and expense as prayed for herein to which it may be entitled.

6. In the event that Owner is entitled to limit its liability to the value of the M.S. NICOLAOS S. EMBIRICOS and her freight as against Brocklebank (which is denied), that Brocklebank recover such damage as may be ratably due it out of funds in Court as a result of these proceedings.

7. That the Court grant to Brocklebank and Cunard such other further and different relief as may be just in the premises.

Lord, Day & Lord

Attorneys for Claimants
Thos. & Jno. Brocklebank Ltd.
and Cunard-Brocklebank Limited
Office and P.O. Address
25 Broadway
New York, New York 10004
344-8480

(Verified)

ANSWER OF THOS. & JNO. BROCKLEBANK LTD. AND CUNARD BROCKLEBANK LIMITED--69 CIV. 5303

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of the	:	
Complaint of COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability.	:	ANSWER 69 Civ. 5303

Thos. & Jno. Brocklebank Ltd. and Cunard-Brocklebank Limited, claimants herein (hereinafter respectively referred to as "Brocklebank" and "Cunard") for their answer to the complaint of Compania Naviera Epsilon S.A. (hereinafter referred to as "Epsilon" or "Plaintiff") as Owner of the M.S. NICOLAOS S. EMBIRICOS for exoneration from or limitation of liability allege upon information and belief as follows:

FIRST: Admit the allegations contained in Paragraph 1 of the complaint.

SECOND: Admit the allegations contained in Paragraph 2 of the complaint.

THIRD: Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the complaint.

FOURTH: Admit that on or about April 17, 1969, the M.S. NICOLAOS S. EMBIRICOS commenced loading general cargo at Calcutta, India and continued loading at other ports, the cargo being destined for New Orleans, Louisiana and east coast United States ports, and except as so expressly admitted, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the complaint.

FIFTH: Admit that on or about 0800 hours on May 13, 1969, the M.S. NICOLAOS S. EMBIRICOS sailed from the port of Colombo, Ceylon and on or about May 15, 1969, stranded on Suvadiva Atoll of the Maldive Islands, and except as so expressly admitted, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the complaint.

SIXTH: Admit that an action has been commenced against plaintiff herein and Brocklebank in the United States District Court for the Southern District of New York by Bunge Corporation and Gillespie & Company of New York, Inc. (hereinafter "Bunge" and "Gillespie") who sue to recover for alleged loss of cargo; that the attorneys for Bunge and Gillespie are Bigham, Englar, Jones & Houston, and the amount of damages claimed in the complaint is $800,000; further admit that an action has been commenced against plaintiff, Brocklebank and Cunard by Keller Industries, Inc. (herein-

after "Keller") to recover for alleged loss of cargo; the attorney for Keller in said suit is David P. Dawson, and the amount of damages claimed in the complaint is $72,000, and except as so expressly admitted, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the complaint.

SEVENTH: Admit the execution of a certain contract of charter party between the plaintiff and Brocklebank, by its agent Cunard, dated March 26, 1969 and the issuance of certain bills of lading by, for and on behalf of, the master of the M.S. NICOLAOS S. EMBIRICOS, to the original of which charter and bills of lading Brocklebank and Cunard refer for the terms and provisions thereof, and except as so expressly admitted, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the complaint.

EIGHTH: Admit that suits have been brought against plaintiff for losses and damages allegedly resulting from the casualty and further allege that if the claimants in said suits or any other claimants are entitled to any recovery, or if Brocklebank or Cunard is entitled to any recovery against plaintiff, then in such event any loss, damage, injury or destruction was done, occasioned and incurred with the privity and knowledge of the plaintiff and was due to its fault and for which it is liable in full to Brocklebank and/or Cunard.

Except as so alleged, deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the complaint.

NINTH: Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the complaint.

TENTH: Admit that plaintiff deposited with this Court security in the amount of $44,780.46, and except as so expressly admitted, deny that plaintiff is entitled to the benefit of the provisions of §§4283 and 4289 inclusive of the Revised Statutes of the United States (46 U.S.C. §§183-189) and all acts amendatory thereof and supplementary thereto, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the complaint.

FURTHER ANSWERING AND AS A FIRST SEPARATE DEFENSE HEREIN, BROCKLEBANK AND CUNARD ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:

ELEVENTH: At all of the times mentioned in the complaint, plaintiff was bound by the charter party between plaintiff and Brocklebank, dated March 26, 1969, which was the personal contract of plaintiff, to have and maintain the vessel in a thoroughly efficient, tight, staunch, strong, fit and seaworthy condition and properly manned, equipped and supplied. If Bunge, Gillespie and Keller, who have brought

the suits referred to in the complaint for cargo loss or damage, or any other claimants have suffered any loss or damage and are entitled to any recovery, which is denied, then and in that event, it is because of the unseaworthiness of the M.S. NICOLAOS S. EMBIRICOS and because of the fault and neglect of its Owner, the plaintiff herein, and with and because of its privity and knowledge, and because of the breach of warranties contained in the said charter party, the personal contract of plaintiff, and because of matters for which plaintiff has assumed full liability under said charter.

Any such loss or damage was not due to a cause for which Brocklebank or Cunard is liable and the responsibility and liability, if any, for any such loss or damage, as between plaintiff and Brocklebank or Cunard, should rest on plaintiff, and if liability for said cargo or any other loss or damage be adjudged against Brocklebank or Cunard, then Brocklebank and/or Cunard should recover of and from the plaintiff, the full loss and damage so recovered and plaintiff should fully indemnify Brocklebank and/or Cunard for all loss, damage and expenses, including but not limited to its reasonable counsel fees, which Brocklebank and/or Cunard suffers or incurrs. Brocklebank and Cunard have heretofore duly demanded of plaintiff that it indemnify Brocklebank and/or Cunard and hold them harmless with respect to any such loss, damage and expense.

FURTHER ANSWERING AND AS A SECOND SEPARATE DEFENSE HEREIN, BROCKLEBANK AND CUNARD ALLEGE ON INFORMATION AND BELIEF AS FOLLOWS:

TWELFTH: The charter party referred to in the complaint is signed on behalf of the plaintiff as follows:

"BY AUTHORITY OF OWNERS

FOR AND ON BEHALF OF

S. G. EMBIRICOS LIMITED

Panayoti Demetrios Christopolous,
Director

AS AGENTS"

Panayoti Demetrios Christopolous who signed said charter party for and as the act of plaintiff, at the time of the signing of said charter party was a Director of S. G. Embiricos Limited, plaintiff's duly authorized agents, with full authority to sign said charter party and to act for plaintiff. The said charter party was the personal act and contract of plaintiff. Accordingly plaintiff is not entitled to any limitation of liability as provided in §§4283 and 4289 inclusive of the Revised Statutes of the U.S. (46 U.S.C. §§183-189) and all acts amendatory thereof and supplementary thereto, or otherwise, as against any claims of Brocklebank or Cunard against the plaintiff because of any breach of, or with respect to, the said charter party, plaintiff's personal contract.

FURTHER ANSWERING AND AS A THIRD SEPARATE DEFENSE HEREIN BROCKLEBANK AND CUNARD ALLEGE ON INFORMATION AND BELIEF AS FOLLOWS:

THIRTEENTH: If Bunge, Gillespie, Keller or any other claimants are entitled to any recovery against Brocklebank, Cunard or plaintiff, it is because such loss, damage, injury and destruction was due to causes and conditions of which plaintiff had knowledge and was in privity and for which it is liable and with respect of which it is not entitled to limitation of liability under §§4283 and 4289 inclusive of the Revised Statutes of the United States (46 U.S.C. §§183-189) and all acts amendatory thereof and supplementary thereto.

WHEREFORE, Brocklebank and Cunard pray that:

1. The complaint of plaintiff for limitation of liability be denied.

2. If Bunge, Gillespie, Keller, or any other claimants herein are entitled to any recovery, plaintiff is not entitled to limit its liability against them with respect to such recovery and its petition for limitation of liability should be denied.

3. If Bunge, Gillespie, Keller, or any other claimants are entitled to any recovery against Brocklebank and/or Cunard for any loss or damage, which is denied, the complaint for exoneration from and limitation of liability

should be denied and Brocklebank and/or Cunard should recover from and be fully indemnified by plaintiff for or with respect to any such loss, damage or expenses, including, but not limited to, their reasonable counsel fees.

4. If Bunge, Gillespie, Keller, or any claimants are entitled to recover against Brocklebank and/or Cunard for any loss or damage and irrespective of any right of plaintiff to limit liability against such claimants herein, which is denied, the plaintiff is not entitled to limit as against Brocklebank and/or Cunard and Brocklebank and/or Cunard are entitled to recover from and be fully indemnified by plaintiff for and with respect to any such loss, damage and expenses, including, but not limited to, their reasonable counsel fees.

5. In any event plaintiff is not entitled to limit its liability against Brocklebank and/or Cunard with respect to all or any loss, damage and expenses suffered or incurred by Brocklebank and/or Cunard. The complaint which seeks to limit liability should be denied and the plaintiff obligated to pay and to indemnify Brocklebank and/or Cunard in full for any and all such loss, damage or expenses, including, but not limited to, their reasonable counsel fees.

6. In the event of it being held that plaintiff is entitled to limit its liability to the value of the M.S. NICOLAOS S. EMBIROCOS and her freight as against Brocklebank

and/or Cunard, which is denied, that Brocklebank and/or Cunard recover such damage as may ratably be due them out of the funds in Court as a result of these proceedings.

7. That the Court grant to Brocklebank and/or Cunard all of their expenses and costs and such other, further and different relief as may be just in the premises.

Lord, Day & Lord
Attorneys for Thos. & Jno.
Brocklebank Ltd. and
Cunard-Brocklebank Limited
Office & P.O. Address
25 Broadway
New York, New York 10004

(Verified)

CLAIM OF BINGHAM & COMPANY, ET AL.--69 CIV. 5303

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. "NICOLAOS S. LEMBIRICOS", for exoneration from or limitation of liability.	69 Civ. 5303 CLAIM

NOW COME BINGHAM & COMPANY INC.; STEIN HALL & COMPANY; HANSON & ORTH INC.; GILLESPIE & COMPANY OF NEW YORK INC.; R.E.B. WILCOX & CO. INC.; ASSOCIATED BAGGING CO. LTD.; AUDLEY CORPORATION; MACKWOODS LIMITED; QAUMI JUTE MILLS LTD.; ADAMJEE JUTE MILLS LIMITED; LATIF RAWANY JUTE MILLS LIMITED; TRANSOCEAN TRADING (EAST PAKISTAN) LTD.; PLATINUM JUBILEE JUTE MILLS LTD.; CRESCENT JUTE MILLS CO. LTD.; BALLY JUTE CO. LTD; BIRLA JUTE MFG. CO. LTD.; GOUREPORE CO. LTD.; NUDDEA MILLS CO. LTD.; FEDERAL INSURANCE COMPANY; UNITED STATES FIRE INSURANCE COMPANY; D. & C. TRADING COMPANY INC.; CARPETING JUTE MILLS LTD.; FIREMAN'S FUND INSURANCE COMPANY; PAK JUTE MILLS LTD.; BUNGE CORPORATION; BUNGE & CO. LTD.; KOHINOOR JUTE MILLS LTD.; CHASE BAG CO.; HAFIZ JUTE MILLS LTD.; PEOPLES JUTE MILLS LTD.; PAKISTAN FABRIC CO. LTD.; BELBAGCO INC.; AMIN JUTE MILLS LTD.; BELTON BAGGING CO.; GREAT AMERICAN INSURANCE COMPANY; B.M.T. COMMODITY CORP., DELCA INTERNATIONAL CORP.;

PAK-AM INC.; KELVIN JUTE CO. LTD.; McLEOD & CO. LTD.; INSURANCE COMPANY OF NORTH AMERICA; LUDLOW CORPORATION; LUDLOW JUTE CO. LTD.; HUKUMCHAND JUTE MILLS LTD.; R.L. PRITCHARD & CO. INC.; LANGSTON BAG COMPANY INC.; COMMERCIAL INSURANCE COMPANY; CONTINENTAL INSURANCE COMPANY; DENIS COMPANY, INC.; WILLCOX ENTERPRISES INC.; UNITED JUTE MILLS LIMITED; VICTORY JUTE PRODUCTS LIMITED; ALPENIA S.A.; JUTE INDUSTRIES LTD. OF NEW YORK; HENRY P. THOMSON INC.; ROYAL INSURANCE COMPANY LTD.; THAMES & MERSEY MARINE INS. CO. LTD.; JUTE INDUSTRIES LTD. (LIVERPOOL); JAMES FINLAY & CO. LTD.; LOUIS DREYFUS & CO. LTD.; BUDGE BUDGE AMALGAMATED MILLS LTD.; TRANSOCEAN TRADING (EAST PAKISTAN) LTD.; M. GOLODETZ & CO.; NORTHWESTERN NATIONAL INS. CO.; HOME INSURANCE COMPANY; C.G. TRADING CORP.; THE AGARPARA CO. LTD.; BIGELOW SANFORD INC.; AMIN JUTE MILLS LTD. CHITTAGONG; SUN INSURANCE COMPANY OF NEW YORK; COMMERCIAL UNION INSURANCE COMPANY; ROYAL ESTATES TEA CO. INC.; LIPTON LTD.; HARTFORD FIRE INSURANCE COMPANY; WERTHAM BAG CORPORATION; MANUFACTURERS COTTON COMPRESS & WAREHOUSE CO.; BOSTON OLD COLONY INSURANCE COMPANY, and make claim against plaintiff, Compania Naviera Epsilon S.A. as follows:

FIRST: Your claimants are variously domiciled and at all times hereinafter mentioned were and now are individuals or partnerships or corporations duly organized and existing under and by virtue of the laws of various

states of the United States or of foreign countries and were the owners and/or shippers and/or consignees of various shipments of cargo delivered in good order and condition to plaintiff during the months of April and May, 1969, at the ports of Calcutta, Chalna, Chittagong and Colombo, or are the lawful owners and holders of negotiable bills of lading covering the various shipments of cargo so delivered and of any claim and of the right of recovery for the loss thereof, or are underwriters of said cargoes so delivered who had issued their policies of insurance covering such cargoes or shipments and by virtue of their payments made or to be made thereunder became or will become subrogated to the claims of their various assureds, and those of the above mentioned claimants who were shippers or consignees and not the owners of the said cargoes at the times mentioned herein file claims not only on their own behalf but as agents of and for the account of the owners thereof.

SECOND: At all said times plaintiff, Compania Naviera Epsilon S.A. was and now is a corporation organized and existing under and by virtue of the laws of the Republic of Panama, and was the owner of the M/S NICOLAOS S. EMBIRICOS.

THIRD: Plaintiff, Compania Naviera Epsilon, S.A.,

accepted the cargoes referred to in Article FIRST herein, so delivered to it at the ports of Calcutta, Chalna, Chittagong and Colombo, and agreed to transport the said cargoes as a common carrier to United States ports on the Gulf of Mexico and the Atlantic Seaboard, and to deliver the same in like good order and condition as when shipped, in accordance with the valid terms and conditions of certain bills of lading signed and delivered to the shippers of the various cargoes by the duly authorized agents of the plaintiff.

FOURTH: On or about May 13, 1969 the M/S NICOLAOS S. EMBIRICOS sailed from the port of Colombo, Ceylon with the cargoes described in Article FIRST hereof on board. Thereafter, on or about May 15, 1969 the vessel stranded on Suvadiva Atoll of the Maldive Islands as a result of plaintiff's failure to exercise due diligence to make the vessel seaworthy at and prior to the commencement of the voyage described. All of the cargo laden in holds #1, #2 and #3 became a total loss. Cargoes laden in holds #4 and #5 were salvaged and forwarded to the ports of New Orleans and Savannah, where they arrived not in the same good order and condition as when delivered but damaged and encumbered with liens for salvage services rendered.

FIFTH: Claimants and other parties in interest have complied with all valid conditions precedent on their respective parts to be performed under the terms of the aforesaid contract of carriage.

SIXTH: By reason of the premises claimants and said other parties in interest have sustained damage in the sum of $3,000,000.00, no part of which has been paid although payment thereof has been duly demanded.

WHEREFORE, claimants pray that this claim be approved and allowed by the Court, with interest and costs, and that claimants may have such other and further relief as in law and justice claimants may be entitled to receive.

BIGHAM, ENGLAR, JONES & HOUSTON

By [illegible]

Attorneys for Claimants

Office & P.O. Address

[illegible]

New York, N.Y. 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of	:	69 Civ. 5303
COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. "NICOLAOS S. EMBIRICOS", for exoneration from or limitation of liability.	:	ANSWER

Bingham & Company Inc., answering the Complaint of Compania Naviera Epsilon, S.A. by its attorneys, Bigham, Englar, Jones & Houston, alleges upon information and belief as follows:

FIRST: Admits the allegations contained in Article 1 of the complaint.

SECOND: Admits the allegations contained in Article 2 of the complaint.

THIRD: Admits that the M/S NICOLAOS S. EMBIRICOS was a Greek flag, dry cargo motor vessel, and denies any knowledge or information sufficient to form a belief as to each and every other allegation contained in Article 3 of the complaint.

FOURTH: Admits that on or about April 17, 1969 the M/S NICOLAOS S. EMBIRICOS began loading cargo at Calcutta, India and continued loading at other ports, and

that the cargo so loaded was destined for United States Ports on the Gulf of Mexico and the East Coast of the United States. Specifically denies that the plaintiff used due diligence to make the NICOLAOS S. EMBIRICOS seaworthy at and prior to the commencement of the voyage and specifically denies that the NICOLAOS S. EMBIRICOS was in fact tight, staunch and strong, fully manned, equipped and supplied, and in all respects seaworthy and fit for the service in which she was engaged.

FIFTH: Specifically denies that the NICOLAOS S. EMBIRICOS was in a seaworthy condition when she sailed from the port of Colombo, Ceylon, and admits each and every other allegation contained in Article 5 of the complaint.

SIXTH: Admits the allegations contained in Article 6 of the complaint.

SEVENTH: Denies the allegations contained in Article 7 of the complaint.

EIGHTH: Denies the allegations contained in Article 8 of the complaint.

NINTH: Denies any knowledge or information sufficient to form a belief as to the amount of the charter hire earned on the voyage, and denies each and every other allegation contained in Article 9 of the complaint.

TENTH: Denies that plaintiff is entitled to the benefits afforded by the provisions of sections 4283 and 4289, inclusive, of the Revised Statutes of the United States.

WHEREFORE, claimants demand (1) that the complaint herein for exoneration from or limitation of liability be dismissed; (2) that this Honorable Court adjudge that the stranding and all damages, losses and injuries resulting therefrom were caused and occasioned by reason of the plaintiff's failure to exercise due diligence to make the NICOLAOS S. EMIRICOS seaworthy at and prior to the inception of the voyage; (3) that these claimants be awarded their damages with interest and costs, and (4) that this Court grant such other and further relief as may be just and proper in the premises.

BIGHAM, ENGLAR, JONES & HOUSTON

By [illegible]
Attorneys for Claimants
Office & P.O. Address
99 John Street
New York, N.Y. 10038

SUMMONS OF BINGHAM & COMPANY, ET AL. V. THOS. & JNO. BROCKLEBANK LTD.--70 CIV. 290

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 70 Civ. 290

BINGHAM & COMPANY INC., et al

Plaintiffs

v.

THOS. & JNO. BROCKLEBANK LTD.

Defendant

To the above named Defendant:

You are hereby summoned and required to serve upon BIGHAM, ENGLAR, JONES & HOUSTON Plaintiff's attorneys, whose address is 99 John Street, New York, N. Y. 10038 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

s/ JOHN LIVINGSTON
Clerk of Court.

s/ J. WEINBERG
Deputy Clerk.

Date: January 23, 1970 [Seal of Court]

Note:--This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT OF BINGHAM & COMPANY, ET AL. V. THOS. & JNO. BROCKLEBANK LTD.--70 CIV. 290

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

BINGHAM & COMPANY INC.; STEIN HALL & COMPANY; HARMAN & CRAM INC.; GILLESPIE & COMPANY OF NEW YORK INC.; R.E.D. MILLER & CO. INC.; ASSOCIATED DAKOTA CO. LTD.; AGENCY CORPORATION; MACHUSETTS LIMITED; INDIA JUTE MILLS LTD.; ANGLO JUTE MILLS LIMITED; ALTIF BAWANY JUTE MILLS LIMITED; TRANS-OCEAN TRADING (EAST PAKISTAN) LTD.; PLANTATION JUTE MILLS LTD.; CHESHIRE JUTE MILLS CO. LTD.; BALLY JUTE CO. LTD.; BIRLA JUTE MFG. CO. LTD.; COUNTURE CO. LTD.; NOTIA MILLS CO. LTD.; D. & C. TRADING COMPANY INC.; CARPETING JUTE MILLS LTD.; PAN JUTE MILLS LTD.; PURSE CORPORATION; BURNE & CO. LTD.; LONDON JUTE MILLS LTD.; CHASE JUG CO.; DAVIE JUTE MILLS LTD.; P. OTTMAN JUTE MILLS LTD.; PAKISTAN PACIFIC CO. LTD.; DELTAGGO INC.; ANGLO JUTE MILLS LTD.; HILTON TRADING CO.; U.N.I.T. COMMODITY CORP; DELTA INTERNATIONAL CORP.; PAK-AM INC.; HELVIN JUTE CO. LTD.; HOWARD & CO. LTD.; LUDLOW CORPORATION; LUDLOW JUTE CO. LTD.; RICHARD JUTE MILLS LTD.; R.L. HOWARD & CO. INC.; LONGTON MFG COMPANY INC.; BLAIR COMPANY, INC.; WILLCOX ENTERPRISES INC.; UNITED JUTE MILLS LIMITED; VICTORY JUTE PRODUCTS LIMITED; ALPHIA S.A.; JUTE INDUSTRIES LTD. OF NEW YORK; HENRY P. THOMPSON INC.; JUTE INDUSTRIES LTD. (LIVERPOOL); JAMES FINLAY & CO. LTD.; LOUIS DREYFUS & CO. LTD.; LONDON LODGE AMALGAMATED MILLS LTD.; TRANS-OCEAN TRADING (EAST PAKISTAN) LTD.; M. GOLDBERG & CO.; C.C. TRADING CORP.; THE ADAMJEE CO. LTD.; DUNDEE LIMITED LTD.; ANGLO JUTE MILLS LTD. (LIVERPOOL); BOYA-STATES TEA CO. INC.; LIPTON LTD.; WILLIAM BAG CORPORATION; MANU-FACTURING COTTON COMPRESS & WAREHOUSE CO.,

Plaintiffs,

-against-

THOS. & JNO. BROCKLEBANK LTD.,

Defendant.

- -x

COMPLAINT

70 Civ. 290

Complaint of Bingham & Company, et al. v. Thos. & Jno. Brocklebank Ltd.--70 Civ. 290

The complaint of Bingham & Company Inc., et al, against Thos. & Jno. Brocklebank Ltd. alleges upon information and belief as follows:

FIRST: This is a case of contract, cargo damage and non-delivery of cargo within the Admiralty and Maritime jurisdiction of this Court. The claims are Admiralty and Maritime claims within the meaning of Rule 9(h).

SECOND: Plaintiffs are variously domiciled and at all times hereinafter mentioned were and now are individuals or partnerships or corporations duly organized and existing under and by virtue of the various laws of the United States or of foreign countries, and were the owners and/or shippers and/or consignees of various shipments of cargo delivered in good order and condition to defendant during the months of April and May, 1969, at the ports of Calcutta, Chalna, Chittagong and Colombo, or are the lawful owners and holders of negotiable bills of lading covering the various shipments of cargo so delivered and of any claim and of the right of recovery for the loss thereof, and those of the above mentioned claimants who were shippers or consignees and not the owners of the said cargoes at the times mentioned herein file suit not only on their own behalf but as agents of and for the account of the owners thereof.

THIRD: Defendant, Thos. & Jno. Brocklebank Ltd., is a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland, with an office and place of business within this District and within the jurisdiction of this Honorable Court, and was the charterer of the M/S NICOLAOS S. EMIRICOS.

FOURTH: Defendant, Thos. & Jno. Brocklebank Ltd., accepted the cargoes referred to in Article SECOND herein, so delivered to it at the ports of Calcutta, Chalna, Chittagong and Colombo, and agreed to transport the said cargoes as a common carrier to United States ports on the Gulf of Mexico and the Atlantic Seaboard, and to deliver the same in like good order and condition as when shipped in accordance with the valid terms and conditions of certain bills of lading signed and delivered to the shippers of the various cargoes by the duly authorized agents of the defendant.

FIFTH: None of the cargo laden in holds #1, #2 and #3 of the M/S NICOLAOS S. EMIRICOS has been delivered by defendant at the contract ports of destination or anywhere else. Cargoes laden in holds #4 and #5 were delivered at the ports of New Orleans and Savannah, where they arrived not in the same good order and condi-

tion as when received by defendant but short, damaged and encumbered with liens.

SIXTH: All conditions precedent required of plaintiffs and all of the others interested in said shipments have been performed.

SEVENTH: By reason of the premises plaintiffs have sustained damage in the sum of $3,500,000.00, no part of which has been paid although payment thereof has been duly demanded.

WHEREFORE, plaintiffs pray that the defendant, Thos. & Jno. Brocklebank Ltd., be required to appear and answer all and singular the matters aforesaid, and that the plaintiffs may have a decree for the amount of their damages with interest and costs, and that the plaintiffs may have such other and further relief as may be just.

BIGHAM, ENGLAR, JONES & HOUSTON

By Donald M. Lee

Attorneys for Plaintiffs
Office & P.O. Address
99 John Street
New York, N.Y. 10038

ANSWER AND COUNTERCLAIM OF THOS. & JNO. BROCKLEBANK LTD.--70 CIV. 290

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -X

BINGHAM & COMPANY INC., et al., :

Plaintiffs, : 70 Civ. 290 In Admiralty

-against- :

THOS. & JNO. BROCKLEBANK LTD. : ANSWER AND COUNTERCLAIM

Defendant. :

- - - - - - - - - - - - - - - - - - - -X

The answer of Thos. & Jno. Brocklebank Limited (hereinafter called "Brocklebank") to the complaint of Bingham & Company Inc., et al. shows upon information and belief as follows:

1. Admits the admiralty and maritime jurisdiction of this court and that the alleged claims are admiralty and maritime claims within the meaning of Rule 9(h). Except as so admitted, denies that it has knowledge or information sufficient to form a belief as to the allegations contained in Paragraph FIRST of the complaint.

2. Denies that it has knowledge or information sufficient to form a belief as to the allegations contained in Paragraph SECOND of the complaint.

3. Admits that at all times hereinafter mentioned Brocklebank was and still is a corporation organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland and was the time charterer

of the M/V NICOLOAS S. EMBIRICOS, pursuant to time charter dated March 26, 1969, to the original of which the defendant Brocklebank refers and makes the same a part of this its answer, and except as so expressly admitted, denies the allegations contained in paragraph THIRD of the complaint.

4. Admits that in or about the months of April and May, 1969, there was delivered to and placed on board the M/V NICOLOAS S. EMBIRICOS at the ports of Calcutta, Chalna, Chittagong and Colombo various cargoes to be carried in said vessel to certain United States ports in consideration of certain freight charges agreed to be paid and subject to all the terms, conditions and exceptions of certain bills of lading then and there issued and to the originals of which Brocklebank refers and makes the same a part of this its answer, and except as so admitted, denies the allegations contained in Paragraph FOURTH of the complaint.

5. Admits that thereafter the M/V NICOLAOS S. EMBIRICOS sailed from the ports of Calcutta, Chalna, Chittagong and Colombo with certain cargo on board, and except as so admitted, denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph FIFTH of the complaint.

6. Denies the allegations contained in Paragraph SIXTH of the complaint.

7. Denies the allegations contained in Paragraph SEVENTH of the complaint except that Brocklebank admits that no part of said sum of $3,500,000 has been paid by it.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

8. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 5 of this answer.

9. The said bills of lading were duly and regularly issued and signed for by the master of the said vessel and constituted contracts of carriage between the vessel owners and said shippers, consignees and/or owners of said cargoes.

10. The loading, handling, stowage and carriage of said cargo, including that of the plaintiffs, to the extent plaintiffs may prove interest therein, was at all times under the sole direction, supervision, care and control of the M/V NICOLOAS S. EMBIRICOS, its owners, officers and crew, and the defendant Brocklebank was in no way responsible therefor.

11. If said cargo was lost or damaged as alleged in Paragraph FIFTH of the complaint, or if the plaintiffs sustained any loss or damage in respect thereto, such loss or damage was not due to any cause or causes for which the defendant Brocklebank is in any manner responsible or liable.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

12. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 5 of this answer.

13. The carriage of the shipments covered by said bills of lading was subject to the provisions of the United States Carriage of Goods By Sea Act, 1936, and if Brocklebank had any responsibility for the loading, handling, stowage or carriage of said cargo, which it denies, such responsibility shall be determined by the provisions of said Act and by reason thereof if plaintiffs sustained any loss or damage as alleged in the complaint, Brocklebank is under no liability therefor.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

14. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 5 of this answer.

15. If Brocklebank had any responsibility for the loading, handling, stowage, or carriage of said cargo, which it denies, Brocklebank alleges that before and at the beginning of the voyage in question due diligence was exercised to make the vessel seaworthy, properly manned, equipped and supplied and all the parts of the ship in which the goods were carried were made fit and safe for their reception, carriage and preservation. If the cargo

referred to in the complaint was lost or damaged or if the plaintiffssustained any loss or damage in respect thereto such loss or damage arose or resulted from an act, neglect or default of the master, mariners, pilot or servants of the carrier in the navigation or in the management of the ship, act of God, perils of the sea and/or other cause or causes for which Brocklebank is not liable under the terms and provisions of the covering bills of lading and/or the United States Carriage of Goods By Sea Act, 1936, and by reason thereof Brocklebank is not responsible for any such loss or damage and is in no way liable therefor.

AS AND FOR A COUNTERCLAIM AGAINST PLAINTIFFS LISTED IN EXHIBIT A ANNEXED HERETO

16. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 5 of this answer.

17. The counterclaim of defendant Brocklebank against the plaintiffs listed in Exhibit A states a case of admiralty and maritime jurisdiction as hereinafter more fully appears and is an admiralty and maritime claim within the meaning of Rule 9(h).

18. Said bills of lading contained, among others, the following clause:

> "Freight on the goods shall be deemed earned on shipment and shall be payable vessel and/or goods lost or not lost *** if the vessel or the goods are lost or do not arrive at such port, [port of discharge] freight shall be paid to the

Carrier without further demand by him within 30 days from the date when delivery would in the ordinary course have been made."

19. By reason of the foregoing the freight monies referred to in said bills of lading and set forth in Exhibit A have been earned and Brocklebank is entitled to payment thereof from said plaintiffs.

20. By reason of the foregoing, defendant Brocklebank has sustained damages in the sum of $148,069.24 as nearly as the same can now be estimated, no part of which has been paid, although duly demanded.

WHEREFORE, defendant Brocklebank demands:

1. That plaintiffs' complaint be dismissed with costs.

2. That process in due form of law according to the course and practice of this Honorable Court in cases of admiralty and maritime jurisdiction issue against the plaintiffs set forth in Exhibit A and that said plaintiffs be cited to appear and answer all and singular the matters set forth in the counterclaim.

3. That judgment be entered in the amount of $148,069.24 with interest and costs in favor of Brocklebank on its counterclaim against said plaintiffs.

4. That defendant Brocklebank have such other, further and different relief as may be just and proper.

LORD, DAY & LORD
Attorneys for Defendant
Thos. & Jno. Brocklebank Ltd.,
Liverpool

By _____
A Member of the Firm

25 Broadway
New York, N. Y. 10004

SS "NICOLAOS S. EMBIRICOS"

	B/L	Plaintiff and Consignee	Description	Freight Due in U.S. $ Total	Grand Total
K1	Chalna/Houston	Bunge Corp.	35 Bales Hessian	950,25 ✓	
K2	Chalna/Houston	Bunge Corp.	50 Bales Hessian	1,296,25	
K3	Chalna/Houston	Bunge Corp.	25 Bales Hessian	766,56	
K6	Chalna/Houston	Bunge Corp.	20 Bales Hessian	692,29	
K8	Chalna/Houston	Bunge Corp.	5 Bales Hessian	177,34	
K1	Chalna/Savannah	Bunge Corp.	50 Bales Hessian	1,664,04	
K12	Chalna/Savannah	Bunge Corp.	50 Bales Hessian	1,790,07	
K1	Chalna/Wilmington	Bunge Corp.	50 Bales Hessian	1,376,67	
K2	Chalna/Wilmington	Bunge Corp.	25 Bales Hessian	775,22	
K3	Chalna/Wilmington	Bunge Corp.	100 Bales Hessian	3,483,81	
K2	Chalna/New Orleans	Bunge Corp.	100 Bales Hessian	3,553,52	
K3	Chalna/New Orleans	Bunge Corp.	65 Bales Hessian	1,811,57	
K4	Chalna/New Orleans	Bunge Corp.	100 Bales Hessian	2,533,47	
K5	Chalna/New Orleans	Bunge Corp.	35 Bales Hessian	1,017,46	

SS "NICOLAOS S. EMBIRICOS"

	B/L	Plaintiff and Consignee	Description		Freight Due in U.S. $ Total	Grand Total
K6	Chalna/New Orleans	Bunge Corp.	50 Bales Hessian	1,427,97		
K7	Chalna/New Orleans	Bunge Corp.	50 Bales Hessian	1,709,26		
K8	Chalna/New Orleans	Bunge Corp.	78 Bales Hessian	1,985,06		
K10	Chalna/New Orleans	Bunge Corp.	50 Bales Hessian	1,417,08		
K21	Chalna/New Orleans	Bunge Corp.	50 Bales Hessian	1,739,06		
K23	Chalna/New Orleans	Bunge Corp.	50 Bales Hessian	1,727,97		
4	Chittagong/New Orleans	Bunge Corp.	25 Bales Hessian	868,86		
5	Chittagong/New Orleans	Bunge Corp.	25 Bales Hessian	847,83	33,611.61 ✓	
21	Calcutta/Savannah	Gillespie & Co. of New York, Inc.	37 Rolls Carpet Backing	1,434,06 ✓		
22	Calcutta/Savannah	Gillespie & Co. of New York, Inc.	8 Rolls Carpet Backing	371,60		
23	Calcutta/Savannah	Gillespie & Co. of New York, Inc.	16 Rolls Carpet Backing	615,03		

SS "NICOLAOS S. EMBIRICOS"

B/L	Plaintiff and Consignee	Description		Freight Due in U.S. $ Total ✓	Grand Total
24 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	40 Rolls Carpet Backing	1,571,85		
25 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	18 Rolls Carpet Backing	1,043,91		
26 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	16 Rolls Carpet Backing	767,58		
27 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	16 Rolls Carpet Backing	503,82		
28 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	45 Rolls Carpet Backing	1,744.27		
29 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	17 Rolls Carpet Backing	748,42		
30 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	10 Rolls Carpet Backing	739,00		
31 Calcutta/Savannah	Gillespie & Co. of New York, Inc.	17 Rolls Carpet Backing	681,55		
2 Calcutta/Houston	Gillespie & Co. of New York, Inc.	90 Rolls Carpet Backing	3,808,04		
3 Calcutta/Houston	Gillespie & Co. of New York, Inc.	48 Rolls Carpet Backing	2,025,94		
4 Calcutta/Houston	Gillespie & Co. of New York, Inc.	129 Rolls Carpet Backing	5,483,78		

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Answer and Counterclaim of Thos. & Jno. Brocklebank Ltd.--70 Civ. 290

SS "NICOLAOS S. EMBIRICOS"

B/L	Plaintiff and Consignee	Description		Freight Due in U.S. $ Total	Grand Total
5 Calcutta/Houston	Gillespie & Co. of New York, Inc.	16 Rolls Carpet Backing	801,52	22,340.37 ✓	
7A Calcutta/Savannah	Delca International Corp.	13 Rolls Carpet Backing	467,18		
10A Calcutta/Savannah	Delca International Corp.	28 Rolls Carpet Backing	1,081,76 ✓		
11A Calcutta/Savannah	Delca International Corp.	23 Rolls Carpet Backing	883,42 ✓		
12 Calcutta/Savannah	Delca International Corp.	25 Rolls Carpet Backing	961,45 ✓		
13 Calcutta/Savannah	Delca International Corp.	3 Rolls Carpet Backing	147,81 ✓		
14 Calcutta/Savannah	Delca International Corp.	17 Rolls Carpet Backing	710,65 ✓		
1 Calcutta/Charleston	Delca International Corp.	37 Rolls Carpet Backing	1,755,62 ✓		
2 Calcutta/Charleston	Delca International Corp.	18 Rolls Carpet Backing	662,30 ✓		
3 Calcutta/Charleston	Delca International Corp.	22 Rolls Carpet Backing	904,34 ✓		

SS "NICOLAOS S. EMBIRICOS"

	B/L	Plaintiff and Consignee	Description		Freight Due in U.S. $ Total	Grand Total
4	Calcutta/Charleston	Delca International Corp.	10 Rolls Carpet Backing	676,38		
5	Calcutta/Charleston	Delca International Corp.	23 Rolls Carpet Backing	1,398,45		
6	Calcutta/Charleston	Delca International Corp.	39 Rolls Carpet Backing	1,654,95		
8	Calcutta/Charleston	Delca International Corp.	30 Rolls Carpet Backing	1,320,81		
1	Calcutta/New Orleans	Delca International Corp.	58 Rolls Carpet Backing	2,397,68	15,022.80	
18	Calcutta/Savannah	Jute Industries,Ltd.	100 Rolls Carpet Backing	4,023,01		
19	Calcutta/Savannah	Jute Industries,Ltd.	200 Rolls Carpet Backing	8,476.10		
20	Calcutta/Savannah	Jute Industries,Ltd.	30 Rolls Carpet Backing	1,201,98		
32	Calcutta/Savannah	Jute Industries,Ltd.	150 Rolls Carpet Backing	5,540,80		
40	Calcutta/Savannah	Jute Industries,Ltd.	59 Rolls Carpet Backing	2,478,84	21,720.73	

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SS "NICOLAOS S. EMBIRICOS"

	B/L	Plaintiff and Consignee	Description		Freight Due in U.S. $ Total	Grand Total
K4	Chalna/Houston	Hanson & Orth, Inc.	100 Bales Burlap	3,270,98		
K5	Chalna/Houston	Hanson & Orth, Inc.	200 Bales Burlap	6,886,61		
K4	Chalna/Wilmington	Hanson & Orth, Inc.	55 Bales Hessian	1,744,75		
K5	Chalna/Wilmington	Hanson & Orth, Inc.	50 Bales Hessian	1,163,26		
K11	Chalna/New Orleans	Hanson & Orth, Inc.	125 Bales Hessian	4,345,53		
K12	Chalna/New Orleans	Hanson & Orth,Inc.	50 Bales Hessian	1,751,69		
K15	Chalna/New Orleans	Hanson & Orth,Inc.	100 Bales Hessian	3,459,03		
K28	Chalna/New Orleans	Hanson & Orth,Inc.	25 Bales Hessian	886,98	23,508.83 ✓	
K12	Chalna/Houston	R.L. Pritchard & Co., Inc.	25 Bales Hessian	576,47 ✓		
K1	Chalna/New Orleans	R.L. Pritchard & Co., Inc.	50 Bales Hessian	1,390,27 ✓		
K9	Chalna/New Orleans	R.L. Pritchard & Co., Inc.	50 Bales Hessian	1,277,44 ✓		
K27	Chalna/New Orleans	R.L. Pritchard & Co., Inc.	50 Bales Hessian	1,401,64 ✓		
K29	Chalna/New Orleans	R.L. Pritchard & Co., Inc.	50 Bales Hessian	1,580,92 ✓	6,226.74 ✓	

SS "NICOLAOS S. EMBIRICOS"

	B/L	Plaintiff and Consignee	Description		Freight Due in U.S. $ Total	Grand Total
1	Chittagong/Savannah	Bigelow Sanford, Inc.	7 Rolls Carpet Backing	590,33		
2	Chittagong/Savannah	Bigelow Sanford, Inc.	12 Rolls Carpet Backing	589,94		
3	Chittangong/Savannah	Bigelow Sanford, Inc.	2 Rolls Carpet Backing	191,92		
4	Chittagong/Savannah	Bigelow Sanford, Inc.	12 Rolls Carpet Backing	734,16	2,106.35	
K19	Chalna/New Orleans	Langston Bag Co.,Inc.	50 Bales Burlap	1,663,82		
K24	Chalna/New Orleans	Langston Bag Co., Inc.	25 Bales Burlap	555,25		
K25	Chalna/New Orleans	Langston Bag Co., Inc.	100 Bales Burlap	3,213,80		
K31	Chalna/New Orleans	Langston Bag Co., Inc.	25 Bales Burlap	807,52	6,240.39	
K22	Chalna/Savannah	M. Golodetz & Co.	25 Bales Hessian	596,33	596.33	
1	Chittagong/New Orleans	Chase Bag Co.	50 Bales Hessian	1,626.72		
2	Chittangong/New Orleans	Chase Bag Co.	25 Bales Jute	467.25	2,093.97	

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Answer and Counterclaim of Thos. & Jno. Brocklebank Ltd.--70 Civ. 290

SS "NICOLAOS S. EMBIRICOS"

	E/L	Plaintiff and Consignee	Description		Freight Due in U.S. $ Total	Grand Total
K16	Chalna/New Orleans	Pioneer Synthetics	50 Bales Burlap	1,749,58		
K17	Chalna/New Orleans	Pioneer Synthetics	75 Bales Burlap	2,305,31		
K18	Chalna/New Orleans	Pioneer Synthetics	50 Bales Burlap	1,648,32		
K20	Chalna/New Orleans	Pioneer Synthetics	100 Bales Burlap	2,463,84		
K26	Chalna/New Orleans	Pioneer Synthetics	100 Bales Burlap	2,897,60	11,064.65	
2	Colombo/New Orleans	Henry P. Thompson, Inc.	497 C/S Tea	3,536,47	3,536.47	148.069.24

ANSWER OF BINGHAM & COMPANY, ET AL., TO THE COUNTERCLAIM--70 CIV. 290

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BINGHAM & COMPANY INC., et al.,
Plaintiffs,
-against-
THOS. & JNO. BROCKLEBANK LTD.,
Defendant.

70 Civ. 290
In Admiralty

ANSWER TO COUNTERCLAIM

The answer of Bingham & Company Inc., et al, to the counterclaim of Thos. & Jno. Brocklebank Ltd. alleges upon information and belief as follows:

1. Admits the allegations contained in Articles 17 and 18 of the counterclaim.

2. Denies the allegations set forth in Articles 19 and 20 of the counterclaim.

WHEREFORE Bingham & Company Inc.,et al, prays that the counterclaim be dismissed with costs.

BIGHAM, ENGLAR, JONES & HOUSTON

By Donald C. Mahoney
A Member of the Firm
Attorneys for plaintiffs
Office & P.O. Address
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New York, N.Y. 10038

TO:

LORD, DAY & LORD
Attorneys for Defendant
25 Broadway
New York, N.Y. 10004

HEALY & BAILLIE
29 Broadway
New York, N.Y. 10006

COMPLAINT OF KELLER INDUSTRIES INC. V. THOS. & JNO. BROCKLEBANK LTD., ET AL.--69 CIV. 4644

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KELLER INDUSTRIES INC.

Plaintiff

against

THOS. & JNO. BROCKLEBANK LTD., CUNARD-BROCKLEBANK LTD., COMPANIA NAVIERA EPSILON, S.A., S.S. EMBIRICOS, LTD. and the SS NICOLAOS S. EMBIRICOS.

Defendants

COMPLAINT

69 Civil 4644

1. This is an admiralty action in rem and in personam in a cause of contract and cargo damage within the admiralty and maritime jurisdiction of this Court. Plaintiff invokes the maritime procedures specified in Rule 9 (h).

2. Plaintiff is a corporation incorporated under the laws of one of the States of the United States with no office in this district.

3. During all the times herein mentioned defendants Thos. & Jno. Brocklebank Ltd. and Cunard-Brocklebank Ltd. were corporations with a principal office and place of business within this district at 25 Broadway, New York, New York, and were the charterers of the Nicolaos S. Embiricos and acted as common

carriers by water of the goods hereafter referred to which were received by defendants herein for shipment on the said vessel.

4. That at all times hereinafter mentioned defendants Compania Naviera Epsilon, S.A. and S.G. Embiricos Ltd. were foreign corporations with no office or place of business in this district and were and are the Owners and operators of the SS NICOLAOS S. EMBIRICOS which carried the goods referred to herein in common carriage.

5. The steamship NICOLAOS S. EMBIRICOS is now or during the pendency of this action will be within this District and within the jurisdiction of this honorable court.

6. On or about April 23-25, 1969 there was delivered at Calcutta by the Raigarh Jute Mills Ltd. to the defendants a shipment of 209 rolls of Hessian Jute Carpet Backing Cloth in good order and condition for transportation on the SS NICOLAOS S. EMBIRICOS to the port of Savannah to the order of the Franklin National Bank, New York, in like good order and condition in consideration of a certain agreed freight and pursuant to the terms of bills of lading numbered 32 and 40 issued by defendants and by the Master of the said steamship.

7. Thereafter the said steamship never arrived at the port of Savannah and neither the defendants nor the said steamship ever delivered the said shipment or any part thereof.

8. Plaintiff became for value the owner of said shipment and the owner and holder of said bills of lading and brings this suit on its own behalf and that of all others interested in said shipment.

9. All conditions precedent required of plaintiff and of all others interested in said shipment have been performed.

10. By reason of the premises plaintiff and those on whose behalf this suit is brought have sustained damage in the sum of $72,000., no part of which has been paid although duly demanded.

WHEREFORE plaintiff prays:

A) That process in due form of law according to the practice of this Court in causes formerly denominated "Admiralty and Maritime jurisdiction", may issue against the defendants THOS. & JNO. BROCKLEBANK LTD., CUNARD-BROCKLEBANK LTD., COMPANIA NAVIERA EPSILON, S.A., S.G. EMBIRICOS, LTD., citing them to appear and answer on oath all and singular the matters aforesaid.

B) That process in form of law according to the practice of this Court in causes formerly denominated "Admiralty and Maritime jurisdiction" issue against the said vessel, NICOLAOS S. EMBIRICOS, her engines, boilers etc. and that all persons claiming any right title or interest in the said vessel may be cited to appear and answer on oath all and singular the matters aforesaid

and that the said steamship may be condemned and sold to pay the demands as aforesaid, with interest and costs.

C) That process in due form of law according to the practice of this Court in causes formerly denominated "Admiralty and Maritime jurisdiction" may issue against the defendants COMPANIA NAVIERA EPSILON, S.A. and S.G. EMBIRICOS LTD., with clause of foreign attachment citing them to appear and answer all and singular the matters aforesaid and if said defendants shall not be found within this district, that all goods, chattels, credits and effects belonging to such defendants in the amount claimed herein and sued for herein, and in the possession of or payable to said defendants by defendant:

Thos. & Jno. Brocklebank Ltd.
or/and by defendant
Cunard-Brocklebank Ltd.
at 25 Broadway, New York, N.Y.

may be attached, and that the said garnishees be cited and admonished to appear and answer under oath as to said goods, chattels, debts, credits, or effects of said defendants COMPANIA NAVIERA EPSILON S.A. and S.G. EMBIRICOS LTD. in their hands.

D) That said goods, chattels, credits and effects may be sold under the direction of this honorable court and the proceeds of said sale and the amounts of said debts credits or monies, in the hands of the said garnishees be brought into this court.

E) That a decree be entered in favor of plaintiffs against the defendants and the said vessel and proceeds herein for the amount of plaintiff's damages herein, together with interest and costs and disbursements.

F) That this court grant such other further and different relief as the justice of the cause may require.

DAVID P. DAWSON
Attorney for Plaintiff
Office & P.O. Address
80 Park Avenue
New York, New York, 10016

ANSWER AND COUNTERCLAIM OF THOS. & JNO. BROCKLEBANK
V. KELLER INDUSTRIES INC.--69 CIV. 4644

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KELLER INDUSTRIES INC.,	:	
Plaintiff,	:	
-against-	:	69 Civil 4644 In Admiralty
THOS. & JNO. BROCKLEBANK LTD., CUNARD-BROCKLEBANK LTD., COMPANIA NAVIERA EPSILON, S.A., S.G. EMBIRICOS, LTD. and the SS NICOLAOS S. EMBIRICOS,	:	ANSWER AND COUNTERCLAIM
Defendants.	:	

The answer of Thos. & Jno. Brocklebank, Ltd. (hereinafter called "Brocklebank") and Cunard-Brocklebank Limited (hereinafter called "Cunard") (hereinafter collectively referred to as the "Defendants") to the complaint of Keller Industries Inc. shows upon information and belief as follows:

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1 of the complaint, except that Defendants admit the admiralty and maritime jurisdiction of this Court.

2. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the complaint.

3. Admit that Brocklebank was the time charterer

of the M/S NICOLAOS S. EMBIRICOS pursuant to Time Charter dated March 26, 1969, the original of which Defendants refer to and make the same a part of this their Answer. Defendants further admit that the goods referred to in Paragraph 6 of the Complaint were delivered to and placed on board the said vessel on or about April 20-25, 1969 at Calcutta for carriage in said vessel pursuant to all of the terms, conditions and exceptions of certain bills of lading then and there issued and to the originals of which Defendants refer and make the same a part of this their Answer. Except as so admitted deny the allegations contained in Paragraph 3 of the Complaint.

4. Admit that Defendants, Compania Naviera Epsilon S.A. and S.G. Embiricos Ltd. are the owners and operators of the M/S NICOLAOS S. EMBIRICOS which carried the goods referred to in common carriage. Defendants deny that Compania Naviera Epsilon S.A. and S.G. Embiricos Ltd. have no office or place of business in this district. Except as so admitted or denied, deny knowledge sufficient to form a belief as to the allegations contained in Paragraph 4 of the Complaint.

5. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 5 of the Complaint.

6. Admit that on or about April 20-25, 1969, there was delivered and placed on board the M/S NICOLAOS S. EMBIRICOS at Calcutta a cargo said to consist of 209 rolls of Hessian

Jute Carpet Backing Cloth in apparent external good order and condition to be carried in said vessel to the Port of Savannah in consideration of certain freight charges agreed to be paid and there to be delivered to the order of the Franklin National Bank, New York, subject to all the terms, conditions and exceptions of Bills of Lading Nos. 32 and 40 then and there issued by the master and to the originals of which Defendants refer and make the same a part of this their Answer. Except as so admitted, deny the allegations contained in Paragraph 6 of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8 of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 9 of the Complaint.

10. Deny the allegations contained in Paragraph 10 of the Complaint, except that Defendants admit that neither the sum of $72,000, nor any part thereof has been paid by Defendants.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

11. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 6 of this Answer.

12. The said bills of lading were duly and regularly issued and signed for by the master of the said vessel and constituted contracts of carriage between the vessel owners and said shippers, consignees and/or owners of said cargoes.

13. The loading, handling, stowage and carriage of said cargo, including that of the Plaintiff, to the extent Plaintiff may prove interest therein, was at all times under the sole direction, supervision, care and control of the M/S NICOLAOS S. EMBIRICOS, its owners, officers and crew, and the Defendants Brocklebank and Cunard were in no way responsible therefor.

14. If said cargo was lost or damaged as alleged in Paragraph 10 of the Complaint, or if the Plaintiff sustained any loss or damage in respect thereto, such loss or damage was not due to any cause or causes for which the Defendants, Brocklebank and Cunard are in any manner responsible or liable.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

15. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 6 of this Answer.

16. The carriage of the shipment covered by said bills of lading was subject to the provisions of the United States Carriage of Goods by Sea Act, 1936, and if Defendants had any responsibility for the loading, handling, stowage or carriage of said cargo, which it denies, said Defendants are exempt from liability for the plaintiff's alleged loss by reason of the provisions of said Act.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

17. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 6 of this Answer.

18. Defendants before and at the beginning of the voyage in question exercised due diligence to make the vessel seaworthy, properly manned, equipped and supplied and made all the parts of the ship in which the goods were carried fit and safe for their reception, carriage and preservation. If the cargo referred to in the Complaint was lost or damaged or if the Plaintiff sustained any loss or damage in respect thereto such loss or damage arose or resulted from an act, neglect or default of the master, mariners, pilot or servants of the carrier in the navigation or in the management of the ship, act of God, perils of the sea and/or other cause or causes for which Defendants are not liable under the terms and provisions of the covering bills of lading, and by reason thereof Defendants are not responsible for any such loss or damage and are in no way liable therefor.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

19. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 6 of this Answer.

20. Said bills of lading contained the following among other clauses:

> "4. Jurisdiction. The contract evidenced by this Bill of Lading shall be governed by English law and disputes determined in England (or at the option of the carrier, at the port of destination) according to English law ***."

21. If the Plaintiff sustained any loss or damage in respect thereto the same was occasioned without the privity or knowledge of Defendants or any of their officers, directors, stockholders or agents and without the privity or knowledge of a representative or managing agent of Defendants.

22. Pursuant to the English law as set forth in the Merchant Shipping (Liability of Shipowners and Others) Act, 1958, 6 & 7 Eliz. 2, c.62 Defendants are entitled to and claim the right to limit their liability for any damage or loss alleged in the Complaint to an aggregate amount not exceeding £23.6901 for each ton of the vessel's tonnage as therein defined, and Defendants claim the benefit of the provisions of said law.

AS AND FOR A COUNTERCLAIM AGAINST PLAINTIFF

23. Repeats and realleges the allegations contained in Paragraphs 3, 4 and 6 of this Answer.

24. The counterclaim of Defendants against Plaintiff states a case of Admiralty and Maritime jurisdiction as hereinafter more fully appears and is an admiralty and maritime claim within the meaning of Rule 9(h).

25. Said bills of lading contained, among others, the following clause:

> "Freight on the goods shall be deemed earned on shipment, and shall be payable vessel and/or goods lost or not lost. ***if the vessel or the goods are lost or do not arrive at such port, (port of discharge) freight shall be paid to the Carrier without further demand by him within 30 days from the date when delivery would in the ordinary course have been made."

26. By reason of the foregoing, the freight monies referred to in said bills of lading have been earned and Defendants are entitled to payment thereof from Plaintiff.

27. By reason of the foregoing, Defendants have sustained damages in the sum of $8,019.64, as nearly as the same can now be estimated, no part of which has been paid, although duly demanded.

28. All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, Defendants demand:

1. That Plaintiff's Complaint be dismissed with costs.

2. That process in due form of law according to the course and practice of this Honorable Court in cases of Admiralty and Maritime jurisdiction issue against the Plaintiff and that Plaintiff be cited to appear and answer all and singular the matters set forth in the counterclaim.

3. That judgment be entered in the amount of $8,019.64 with interest and costs in favor of Defendants on their counterclaim against Plaintiff.

4. That Defendants have such other, further and different relief as may be just and proper.

LORD, DAY & LORD

By /s/ Henry C. Blackerton

A Member of the Firm
Attorneys for Defendants,
Thos. & Jno. Brocklebank
Ltd, Liverpool and Cunard-
Brocklebank Limited
25 Broadway
New York, New York 10004

ANSWER OF KELLER INDUSTRIES INC. TO THE COUNTERCLAIM--69 CIV. 4644

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KELLER INDUSTRIES INC.,

Plaintiff,

- against -

THOS. & JNO. BROCKLEBANK LTD., CUNARD-BROCKLEBANK LTD., COMPANIA NAVIERA EPSILON, S.A., S.G. EMBIRICOS, LTD and the SS NICOLAOS S. EMBIRICOS.

Defendants.

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69 Civil 4644

REPLY TO COUNTER-CLAIM

Plaintiff Keller Industries Inc., for reply to the counterclaim set forth in paragraphs "23" through "28" of the answer of Defendants, Thos & Jno. Brocklebank Ltd. and Cunard-Brocklebank Limited says:

1. It denies knowledge or information sufficient to form a belief as the allegations in the paragraphs of the Answer numbered "23", "25".
2. It denies the allegations in the paragraphs of the answer numbered "26" and "27". and "28"

WHEREFORE, Plaintiff demands that defendant's counterclaim be dismissed and that Plaintiff be awarded judgment as prayed in the complaint.

DAVID P. DAWSON
Attorney for Plaintiff,
Keller Industries Inc.
30 Park Avenue
New York, N.Y. 10016

PRETRIAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as Owner of the MS. NICOLAOS S. EMIBRICOS, for exoneration from or limitation of liability.	69 Civ. 5303
BINGHAM & COMPANY INC., et al., Plaintiffs, against THOS. & JNO. BROCKLEBANK LTD., Defendant,	70 Civ. 290
KELLER INDUSTRIES, INC., Plaintiff, against THOS. & JNO. BROCKLEBANK LTD., CUNARD-BROCKLEBANK LTD., COMPANIA NAVIERA EPSILON, S.A. S.G. EMBIRICOS LTD. and the SS NICOLAOS S. EMBIRICOS Defendants,	69 Civ. 4644

* * *

(8) The schedule of freight monies attached to the answer and counterclaim of Thos. & Jno. Brocklebank, Ltd. in 70 Civ. 290 accurately sets forth the bill of lading, name of plaintiff and consignee, description of cargo, and freight monies billed said consignees by Thos. & Jno. Brocklebank Ltd. The bills for freight have not been paid.

* * *

STIPULATION TO ABIDE THE EVENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as Owner of the MS. NICOLAOS S. EMIBRICOS, for exoneration from or limitation of liability.	STIPULATION TO ABIDE THE EVENT 69 Civ. 5303
BINGHAM & COMPANY INC., et al., Plaintiffs, against THOS. & JNO. BROCKLEBANK LTD., Defendant,	70 Civ. 290
KELLER INDUSTRIES, INC., Plaintiff, against THOS. & JNO. BROCKLEBANK LTD., CUNARD-BROCKLEBANK LTD., COMPANIA NAVIERA EPSILON, S.A. S.G. EMBIRICOS LTD. and the SS NICOLAOS S. EMBIRICOS Defendants,	69 Civ. 4644

* * *

Stipulation to Abide the Event

3. The decision of the Court on the issues to be tried with respect to the rights and liabilities of Plaintiffs/ Claimants Bingham & Company et al under their bills of lading herein, shall also be binding on and applicable to the rights and liabilities herein of Plaintiff/Claimant Keller Industries, Inc. under its Calcutta/Savannah bills of lading 32 and 40 herein.

* * *

OPINION OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability	:	69 Civ 5303
BINGHAM & COMPANY, et al., Plaintiffs, -against- THOS. & JNO. BROCKLEBANK, LTD., Defendant.	:	70 Civ. 290
KELLER INDUSTRIES, INC., Plaintiff, -against- THOS. & JNO. BROCKLEBANK LTD., et al., Defendants.	:	69 Civ. 4644

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
Nov 16 10 52 AM '73

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FRANKEL, D.J.

These consolidated actions within the court's

admiralty jurisdiction arise out of the stranding of the vessel M.S. Nicolaos Embiricos (hereinafter "Embiricos") on Suvadiva Atoll, Maldive Islands, on May 15, 1969. Following the commencement of an action by one of the cargo claimants against the charterer, Thos. & Jno. Brocklebank Ltd.,[1] and the shipowner, Compania Naviera Epsilon (hereinafter "Epsilon"), the latter commenced a proceeding for exoneration or limitation of liability. The limitation proceeding has been consolidated with actions by various cargo claimants and claims for indemnity by the charterer against the owner.

Epsilon, seeking exoneration under the Carriage of Goods by Sea Act (COGSA), 46 U.S.C. §1300 et seq., alleges that the vessel was lost because of negligent navigation by the ship's master. The cargo claimants, on the other hand, contend that the stranding occurred

1. Cunard-Brocklebank Ltd., agent of the charterer, was also a named defendant, but was dropped from the case by stipulation.

due to the unseaworthiness of the vessel, which in turn resulted from a lack of due diligence on the part of Epsilon. The charterer seeks indemnity from the shipowner in the event of a finding of liability, and also claims entitlement in any event to its attorneys' fees and costs. The charterer has, in addition, counterclaimed against the cargo claimants for unpaid freight charges amounting to $156,088.88. In the alternative, the charterer seeks these charges from Epsilon. Both the cargo claimants and shipowner deny any liability on the charterer's freight claims.

By agreement of the parties the trial was limited, with one exception, to the issues of liability and indemnity, with potential damage questions reserved. The exception is as to Brocklebank's freight claim, the amount of which is undisputed, so that this subject is ready now for final disposition.

I.

Having heard the evidence without a jury, the court makes the following findings of fact:

On the date of the stranding, May 15, 1969. Epsilon, a Panamian corporation, was the owner and operator of the Embiricos. The Embiricos was registered under the laws of Greece and was under time charter to Brocklebank.

Brocklebank issued bills of lading to various shippers, including Bingham & Company and Keller Industries, which are cargo claimants here. The charterer was to carry cargo from Pakistani, Indian, and Ceylonese ports to consignees on the east and Gulf coasts of the United States.

On March 26, 1969, the Embiricos sailed from Lourenco Marques to Colombo, Ceylon, via the One and half degree Channel in the Indian Ocean. This Channel is a stretch of open water approximately 54 miles wide between two atolls of the Maldive Islands. The vessel had negotiated the channel on the northeasterly voyage to Colombo without incident.

On April 14, 1969, the Embiricos arrived at Calcutta. From Calcutta the vessel sailed to Chittagong, where the radar underwent repairs, described more fully below.

On the morning of May 13, 1969, the ship departed from Colombo, Ceylon, en route to Durban, South Africa, and then to American ports. The master, Efstratios M. Koutsoukos, projected a course through the Maldive Islands, again via the One and half degree Channel. Koutsoukos plotted a course line of 228 degrees true on the ship's chart. Following the departure from Colombo the ship's radar was turned off, and it was not used again until after the stranding.

At noon on the same day Koutsoukos determined the vessel's actual position by means of celestial aids. On this basis he altered the course to 230 degrees true, but failed to plot the new course projection on the ship's chart.

At noon on May 14th Koutsoukos again determined his current position by dead reckoning. Having already failed to plot the 230 degree course, which had been established on the 13th, he then made two further errors. Forgetting that the course had been changed to 230 degrees, he compared his May 14th position with the original course of 228 degrees

and wrongly determined that the current had set the vessel to the north when in fact the vessel had been set several miles southerly. At the same time he neglected to take into account the fact that the vessel was subjected to strong easterly currents in the area of the One and half degree channel. Reasoning from his mistaken premises, the master changed course to 233 degrees true. He believed that such a course would bring the vessel safely through the channel, 16 miles north of Suvadiva Atoll.

During the night of May 14th Koutsoukos ordered the second mate, G.M. Marinatos, to change course at 11:45 p.m. to 247 degrees true. Koutsoukos then left the bridge for the night. Marinatos ended his watch at midnight, and turned the watch over to second mate Alexopoulos. At 1:22 a.m. on the morning of May 15, 1969, the vessel took the strand on a reef approximately four miles south of Suvadiva Atoll. The vessel was eventually abandoned as a constructive total loss, and the cargoes were totally or partially lost.

The shipowner contends that the stranding

resulted from the captain's navigation errors described above and that the vessel was seaworthy in all respects. Cargo claimants maintain, on the other hand, that the vessel stranded because of unseaworthiness. Cargo claimants urge the following specific conditions of unseaworthiness:

(1) The ship's navigation aids, i.e., charts and books, were not current, and thus the master was deprived of information regarding the direction and strength of the currents east of the One and half degree channel.

(2) The vessel's radar was improperly maintained and known to be unreliable.

(3) The ship's master was incompetent, and the owner should have known this.

(4) The vessel was improperly manned in the further respect that Second Mate Alexopoulos was not a duly licensed officer, that his service aboard the vessel was in violation of Greek crew-complement laws, and that he was in fact incompetent in not ascertaining Koutsoukos's errors and questioning the latter's navigation techniques.

Captain Koutsoukos's negligence in navigation was the proximate cause of the loss. As indicated above, Koutsoukos's failure to plot the projection of the 230 degree course on May 13, 1969, led to a serious miscalculation of the vessel's position. This error was magnified by the captain's failure to take into account the easterly currents affecting the ship's course.

While the master's negligent navigation was the immediate and sufficient cause of the strand, he had already committed a more basic error in selecting the One and half degree channel route. Navigation guides available on the Embiricos showed that the recommended and safer course at that time of year lay south of the Maldives rather than through the channel. The channel passage featured uncertain currents during months other than April and October. Such currents made the journey dangerous, as the unhappy fate of the Embiricos illustrated.

Another serious error flowed from the negligence in navigation described above. The master determined not to use radar on this particular leg of the voyage,

believing that the ship's position did not require its use. The court finds (resolving a dispute more fully treated below) that the radar was in operating condition and that Koutsoukos's failure to employ it during the complicated one and half degree Channel passage constituted an error which also proximately caused the stranding.

II.

As indicated above, the cargo claimants point to four specific areas in which the vessel was allegedly unseaworthy.

1. Aids to navigation

Cargo claimants contend that the Embiricos was unseaworthy because (a) it did not carry certain American publications, including The Atlas of Pilot Charts, South Pacific, and Indian Ocean, 3rd edition, 1966 (a United States Naval Oceanographic Office publication) and (b) certain British publications which it did carry were outdated editions. More specifically, it is noted that the vessel carried the West Coast of India Pilot (British Hydrographic Office, 1950) with its 1957 supplement rather than the more recent 10th edition published in 1961. It is alleged that these additional publications would have educated

the master about the direction of the current east of the One and half degree channel, and that, properly forewarned, the master would have checked his navigation more closely and avoided the errors leading to the stranding. The court rejects the claim that the Embiricos was required to carry American publications in addition to the full British Admiralty set it had. The ship was registered in Greece and its parent company, while a Panama corporation, was based in Greece and England. No nexus with the United States existed, and there is no duty upon a shipowner to stock the navigational aids of all maritime countries.

In any event, the British aids were ample to the occasion; properly employed, the publications on board would and should have prevented the disaster. They warned adequately of the currents neglected by the master. They showed, too, that the channel was the wrong course to begin with at that time of year.

With regard to the later edition of the West Coast of India Pilot, which was available in 1969 but not on the vessel, the information available only in that edition included a report on radar soundings which

would not in itself have enlightened the master as to his neglect of the currents. Nor is it more than remote speculation that the Pilot's information would have induced Koutsoukos to turn the radar on.[2]

The court finds that the error here lay not in the failure to supply available navigational information as a basis for intelligent navigational decisions, but in "the failure of [the] master to make proper use of information which was available to him." Savannah Sugar Refining Corp. v. Atlantic Towing Co., 15 F.2d 648, 651 (5th Cir. 1926).

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2. Cargo claimants rely upon the information contained in the 1961 edition that:

> "In 1960 HMS SCARBOROUGH reported that the coral islands on the [Maldivian] atolls could be detected by radar at a range of just over 20 miles and the arrangement of individual islands could be obtained at 15 miles. The breakers on the edges of the reefs were detected at about 2 miles."

However, Koutsoukos testified that during his earlier passage through the One and half degree Channel he had employed the radar system and obtained no pertinent readings. In fact, this was one of the explanations why he did not use radar during this ill-fated voyage. Thus, the court concludes that even with the information provided in the 1961 Pilot (which, as the report of only one vessel's experience, is far from conclusive), Koutsoukos would not have turned the radar on.

2. The radar on the Embiricos

The parties do not dispute that after leaving Colombo Koutsoukos ordered the radar unit secured. Cargo claimants contend that the captain had no faith in the radar because of frequent malfunctions and that the radar was not in proper working order when the vessel left Colombo. Cargo claimants rely upon the master's alleged statement to an investigator, who was sent to the vessel after the Embiricos took the strand, that "he [Koutsoukos] had no faith in the radar." In addition, these claimants point to the statement of Second Mate Alexopolous to the Greek Merchant Marine authorities investigating the accident that the radar was not functioning, and that in his opinion the accident would have been avoided if the radar had been working. Finally, the cargo claimants presented an expert radar witness, Russel Ely, who examined the five reports of radar repairs from October 7, 1968, to April 29, 1969. Ely testified that in each port the radar had been repaired properly based upon the information then immediately available to the servicemen. He stated, however, that given the recurring problems suffered by the radar unit there was a basic flaw in the set which was never detected.

He believed that although the radar operated properly while the vessel was in port, once at sea conditions were changed sufficiently so that the radar was not reliable. He concluded that one of four possible conditions was responsible for the radar's malfunction: (1) leakage of water or oil into the wave guide, (2) metal or stones in the wave guide, (3) malfunction of the antenna, or (4) loose controls. Ely explained that without a radar log book to reflect the recurrent radar problems, the repairmen in the ports would not have been able to detect the more serious problem which afflicted the unit. It was Ely's view that the radar was not in useful operating order when the vessel was on the high seas.

Despite these contentions, the court finds that the weight of the evidence supports the conclusion that the radar was in good operating order. Koutsoukos's statement to Lassiter, although not objected to at trial, was hearsay upon hearsay. Although it was perhaps technically admissible, the court places greater reliance upon Koutsoukos's deposition testimony. He testified that after leaving Chittagong the radar was in perfectly good condition. Alexopoulos testified during his deposition that the radar was all right

but was not in use during his watch when the stranding occurred. Further, Alexopoulos subsequently changed his statement to the Greek authorities and insisted that the radar was in operating order. While such shifting testimony is not impressively favorable to the shipowner, there is further support for the conclusion that the radar was operational. Captain Lassiter, the cargo claimants' investigator, stated in his report that while the vessel was on the strand he operated the radar unit for some seven hours and it seemed fine. Epsilon produced its own expert witness, Stanley Thompson, who had been a member of the team which designed the prototype of the Marconi radar unit on the Embiricos. Thompson too examined the repair reports of the ship's radar unit. He characterized each of the repairs as "minor adjustments," and testified that it was normal for each serviceman to "retune" the unit upon completion of the repairs. He concluded that the repairs did not suggest a "pattern" reflecting a more serious problem. He persuasively refuted Ely's contentions that the problems of water or oil in the wave guide, metal or stones in the wave guide, antenna damage, or loose controls would not have been detected by the repairmen

in the ports. Thompson concluded that such problems, if they existed, would have affected the performance of the radar unit while the vessel was in port as well as at sea.

On balance, setting the opposed contentions in the context of the whole record, the court rejects Ely's theory and credits the testimony of Thompson. The court finds that the radar on the Embiricos was in operating condition prior to the stranding and that the vessel was not unseaworthy in this respect.

3. The master's incompetence

The third allegation of unseaworthiness is the asserted incompetence of the master. Under COGSA, 46 U.S.C. §1304(1), the failure to man the vessel properly constitutes unseaworthiness which makes the owner liable if it has not exercised due diligence in satisfying this obligation. Cargo claimants rely here on their expert witness, Captain Maiden, who testified that a competent captain would have been aware of the easterly current outside the One and half degree channel. Further, Maiden stated that Koutsoukos improperly calculated a set and drift problem, which Maiden classified as "basic navigation" to a mariner.

Finally, cargo claimants point to prior strandings in 1964 and 1968 as evidence of Koutsoukos's incompetence.

The court has found, as already noted, that Koutsoukos in fact committed serious errors during the voyage in question. However, the court is not convinced that his conduct reflected such a condition of incompetence as to have made the vessel unseaworthy. Koutsoukos was an experienced navigator who had previously demonstrated his competence in safely sailing the Embiricos. He was properly licensed and had served as master of the vessel for many years without any serious incidents or the sustaining of severe hull damage. Indeed, he had successfully navigated an earlier voyage through the One and half degree Channel less than two months before the stranding. While his navigational lapses on the instant voyage were grave, they do not demonstrate a general inability to navigate the vessel.

Moreover, the defense of due diligence has been amply established on the facts before us. Epsilon was entitled to rely upon Koutsoukos's proper license

and safe past record as evidence of his qualifications to serve as a master.[3] Cargo suggests that the master's decision not to use radar when such a standard navigational aid was available was in itself sufficient to show incompetence. Whatever may be the rule concerning the need for a ship to possess operating radar on the high seas, The T.J. Hooper 60 F.2d 737 (2d Cir.), cert. den. sub. nom. Eastern Transportation Co. v. Northern Barge Corp., 387 U.S. 662 (1932); Afran Transportation v. The Bergenchief, 274 F.2d 469, 474 (2d Cir. 1960), it is clear that if a vessel is equipped with properly functioning radar, there is an affirmative duty to use it in an "intelligent and reasonable" manner. White Stack Towing Corp. v. Bethlehem Steel Co., 279 F.2d 419, 423 (4th Cir. 1960); Villain & Fassio E Compagnia v. Tank Steamer E.W. Sinclair, 207 F. Supp.

3. Director General of India Sup. Mission v. S.S. Janet Quinn, 335 F.Supp. 1329 (S.D.N.Y. 1971); American Tobacco Company v. Goulandris, 173 F.Supp. 140 (S.D.N.Y. 1959), aff'd, 281 F.2d 179 (2d Cir. 1960), mod., sub.nom. Lekas & Drivas, Inc. v. Goulandris, 306 F.2d 426 (2d Cir. 1962).

700, 703n.1 (S.D.N.Y. 1962).

The master's decision not to use radar flowed from his earlier navigational errors in failing to plot course changes correctly and in neglecting to take into account the effect of the easterly currents in the channel. If the vessel had not, for the reasons mentioned above, been off course it would have reached a point, at the time of the actual stranding, which was well out to sea in the channel and where the use of radar, as with the master's previous voyage through the channel, would not have been necessary to proper navigation. The master's failure to use radar, however it appears in retrospect, cannot be charged to incompetence in that his decision was posited on his previous navigational error and would not have been improper if his belief as to the position of the vessel had not been awry.

4. Improper manning of the vessel.

The final claim of unseaworthiness is that the vessel was improperly manned under the provisions of Greek law. It is not disputed that Second Mate Alexopoulos did not possess a ticket which licensed him

to serve as second mate aboard the vessel. However, Greek Law Number 2651 covering crew manning requirements for Greek flag ships, allows an otherwise unlicensed seaman to serve as an officer when certain specified conditions are met. Admiral Hamides, who had been charged with enforcement of this law, testified to the applicable standards under 2651. Hamides testified that non-licensed seaman could serve in higher positions when one of the following conditions existed:

(1) Seamen holding licenses for the desired position were not available in the port where the vessel docked and in the port next to the one where the vessel was docked, and the seamen could not be brought to the vessel with sufficient speed to avoid a delay in departure.

(2) The appropriate seamen were available but not willing to serve.

(3) The seamen were available and willing to serve but demanded terms of employment exceeding those prescribed by Greek law.

(4) A seaman was available but his conduct was known to be poor.

Hamides explained that the critical question of "availability" of qualified seamen was determined by the Port Officer in charge of the port in question. The corresponding official who approved Alexopoulos's sailing on the Embiricos was Captain Kypriotes.[4] Kypriotes testified that he was familiar with the supply of second mates in Rotterdam and Holland during 1968 and that no such seamen were available when Alexopoulos was approved. Cargo claimants sought to disprove this testimony by offering a record obtained from the Maritime Employment Agency in Greece which attests to a list of unemployed second mates during January-April, 1968.

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4. Alexopoulos joined the ship originally at Ravenna, Italy, in April, 1968. He had been sent to the vessel from Piraeus after he was hired by Epsilon in Athens. Since there was no Greek port officer at Ravenna, new articles were signed in Rotterdam in October 1968, when Kypriotes gave his approval to Alexopoulos. Thus, at the commencement of this ill-fated voyage he had been acting in the capacity of licensed mate for almost a year.

Further, these claimants sought to raise an inference of available seamen by adducing the fact that several vessels in the Epsilon fleet were sold or lost in 1968-69 so that their crews should have been available for employment. Nevertheless, George Andronikis, the general manager of Epsilon, testified to his efforts during the period in question to obtain qualified seamen. His attempts at finding such mates were unsuccessful. Indeed, Andronikis hired the licensed second mate, Marinatos, at a higher rate than that provided by law after Alexopoulos was already employed.

The court finds that given the approval of the Greek official in Rotterdam, and the substantial efforts by Andronikis to find licensed seamen, cargo claimants have failed to satisfy their burden of proving that qualified seamen were available to serve as second mates at the appropriate rates in 1968.

However, the cargo claimants do not rest their claim of improper manning solely on the availability of seamen. A further provision in Law No. 2651 requires the vessel owner to replace the unlicensed seamen within a maximum statutory period, testified

to as one year by Admiral Hamides. Hamides explained that this restriction could be negated if the Instrument of Approval issued by the Greek Government provided terms more liberal than those in 2651. The Instrument of Approval in the instant case contained no time period of limitation on the service of unlicensed officers.

The parties dispute the manner in which this Instrument of Approval is to be construed with the general law. Cargo claimants contend through their Greek correspondent, Spyros Nicolaidis, that the general law controls since the Instrument of Approval does not expressly extend the time limitations. However, when pressed by the court for the basis of his legal opinion, Nicolaidis was unable to cite support other than a simple reading of the statute alone. Epsilon's rebuttal correspondent, George Daniolios, testified that Law Number 2651 is a law of general application whereas the Instrument of Approval is a specific "law" issued to govern a particular vessel. Such instruments are promulgated under the authority of Greek Law No. 2687,

which grants the Greek Government power to issue such an instrument approving the registration, with special stipulations, of a ship under the Greek flag by joint ministerial decree of the Ministers of Merchant Marine, Co-ordination, and Finance. Unlike a law of general application, an Instrument of Approval may not be changed without the consent of the owner and mortgagee of the vessel so long as the ship for which the Instrument is issued remains registered under the Greek flag. Daniolios testified that the Instrument of Approval takes precedence over inconsistent provisions in 2651, the crew manning statute, in that the purpose of the Instrument generally is to expand the rights which a shipowner would otherwise have under Greek law. Thus, Daniolios concluded that the Embiricos's Instrument of Approval negated the applicable time limitations of 2651. The testimony of Admiral Hamides tended to confirm the view that the Instrument of Approval takes precedence over inconsistent provisions in 2651.

The court agrees with the shipowner's view that the specific terms of the Instrument of Approval are controlling.

Even on their contrary view, however, the cargo claimants could not prevail. For if it were held that the manning of the Embiricos offended Greek law because of Alexopoulos's insufficient credentials, the fault would not in any event constitute a proximate cause of the stranding. The claim of proximate causation rests upon the contention that a properly qualified second mate would have corrected the Master's navigation errors, and would have operated the ship's radar during the watch when the stranding occurred. The court rejects these speculations. We note that Marinatos was a licensed second mate, but he did not (as most subordinates would not) question the Captain's navigation calculations, despite the fact that he was given the last course correction before the vessel took the strand. First Mate Boulmetis testified that he too never plotted the vessel's course. The court cannot assume that if Alexopoulos had been replaced by a licensed second mate, the replacement would have corrected the Captain's mistakes.

Captain Koutsoukos testified credibly that the practice on the Embiricos was to require the officers

to seek his authorization and assistance before turning on the radar. Thus, even a licensed second mate would not have operated the radar given the Master's decision that it was not helpful during this voyage.

III.

Upon the foregoing findings the court rests the following conclusions of law:

1. The Carriage of Goods by Sea Act, 46 U.S.C. §1304(2), provides:

> "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from -
>
> "(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship. . . ."

Under the Act, the burden of proof rests initially with the shipowner to establish that the proximate cause of the loss was within a quoted exception. Lekas & Drivas, Inc. v. Goulandris, 306 F.2d 426 (2d Cir. 1962); Gilmore & Black, The Law of Admiralty § 3.43 at 162-3 (1957). Epsilon has met that burden by showing that the cause of the stranding was negligent navigation by the master.

2. Once the shipowner has established that the proximate cause of the loss was an excepted peril, the burden shifts to the cargo claimant on its claim that unseaworthiness caused the injury. Director General of India Supply Mission v. S.S. Maru, 459 F.2d 1370, 1372 (2d Cir. 1972); Firestone Synthetic Fibers Co. v. M/S Black Heron, 324 F.2d 835, 837 (2d Cir. 1963). The defense of an excepted peril is not conditioned on a showing by the vessel owner of seaworthiness or due diligence to make the vessel seaworthy. The unseaworthiness must be shown to be "an effective and proximate cause of the damage." Union Carbide and Carbon Corp. v. The Walter Raleigh, et al., 109 F. Supp. 781, 793 (S.D.N.Y. 1951) aff'd sub nom. Union Carbide & Carbon Corp. v. United States, 200 F.2d 908 (2d Cir. 1953). The cargo claimants have failed to satisfy their burden of establishing either unseaworthiness, or, if there was unseaworthiness, a causal connection between the unseaworthiness and the stranding.

3. It follows that the vessel owner is entitled to exoneration from liability. Similarly, the charterer is free of any liability under 46 U.S.C.

§1304(2)(a). Consequently, the owner's petition will be granted, and the cargo claimants' actions, consolidated with this proceeding, will be dismissed.

4. We turn to the issue of the freight charges. The general rule is well settled in maritime law that a carrier cannot recover freight charges unless and until the goods are delivered to destination. It is equally well settled that the parties may contract out of the general rule by agreeing that the shipper will be liable without actual delivery. Alcoa S.S. Co. v. United States, 338 U.S. 421, 422 (1949). Brocklebank included such a "Guaranteed Freight Clause" in the bills of lading issued to the cargo claimants:

> "Freight on the goods shall be deemed earned on shipment and shall be payable vessel and/or goods lost or not lost."

It is not disputed that as a result of the stranding the cargoes owned by claimants either sustained damage or were totally or partially lost.

Since the stranding was proximately caused solely by the negligence of the Embiricos's master, cargo claimants cannot rely on their contentions

of unseaworthiness to defeat Brocklebank's claim. Acknowledging this, and assuming arguendo that Epsilon and Brocklebank may not because of COGSA be held liable for the master's negligence, the cargo claimants nevertheless argue that this negligence should be held to defeat the bill-of-lading provision. Without tracking the argument here, the court merely notes the conclusion that it is essentially at war with COGSA's policy and, therefore, unacceptable. Cf. The Globe & Rutgers Fire Insurance Co. v. United States, 105 F.2d 160 (2d Cir. 1939).

Brocklebank will, accordingly, recover its freight charges.

5. The charterer claims from the shipowner its attorneys' fees and legal costs of defending this action. As between the charterer and the owner, the latter, under the agreement, was " . . . to remain responsible for the navigation of the vessel, . . . crew, and all other matters same as when trading for [its] own account." It follows from this contractual undertaking and relevant principles of indemnity that the claim for attorneys' fees and costs should be allowed. Nichimen Company v. M.V. Farland, 462 F.2d

319, 333 (2d Cir. 1972).

This conclusion is not avoided by the owner's contention that it had informally stated its readiness to indemnify the charterer for any liability on the claims of cargo. The charterer was obviously entitled to protect its own interests and was not required to rely either upon such informal assurances or the continued financial solvency of the owner.[5]

To summarize the court's conclusions: The complaints of the cargo claimants will be dismissed. The owner's petition will be granted. The charterer will recover its freight charges in the agreed amount of $156,088.88. The charterer will recover from the owner its attorneys' fees and costs in an amount to be stipulated, if possible, otherwise to be determined hereafter

5. There has been no suggestion that the burden of attorneys' fees and costs should be divided as between the claims of cargo against the charterer and the latter's counterclaims for freight. It does not seem that the effort would be useful as a practical matter.

by the court or by reference to a special master. The charterer will have interest on its award for freights from the due dates of payment under the bills of lading, a result reached in the usual exercise of this court's discretion on such subjects. Cf. Orient Mid-East Lines, Inc. v. Cooperative for A.R.E., Inc., 284 F.Supp. 34, 47 (D.D.C. 1968), aff'd, 410 F.2d 1006(D.C.Cir. 1969).

The shipowner should prepare a proposed decree and undertake to seek the consent of the other parties as to its form for submission to the court. If there is not such consent, the shipowner will submit a proposed decree on suitable notice, and the other parties will tender specific objections rather than substitute proposed decrees of their own.

It is so ordered.

Dated, New York, New York
November 16, 1973

Marvin E. Frankel
U.S.D.J.

CORRECTION TO THE OPINION FILED NOVEMBER 21, 1973

[illegible] DISTRICT COURT
[illegible] DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA NORIKO, S.A. Plaintiff, as Owner of the M.V. NICOLAOS S. LEVENTIS, for exoneration from or limitation of liability	:	69 Civ. 5303
BINGHAM & COMPANY, et al., Plaintiffs, -against- THOS. & JNO. BROCKLEBANK, LTD., Defendant.	:	70 Civ. 20
KELLER INDUSTRIES, INC., Plaintiff, -against- THOS. & JNO. BROCKLEBANK LTD., Defendants.	:	69 Civ. 4644

#40617

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
NOV 21 1 28 PM '73

FRANKEL, D.J.

To correct an error called to the court's attention by counsel for the shipowner, the court's

Correction to the Opinion Filed November 21, 1973

Findings of Fact and Conclusions of Law dated November 16, 1973, are hereby corrected. The eighteenth line at page 15 reading "them on their expert witness, Captain Holden, who testified", is deleted and there is substituted therefor the words "on Captain Holden's testimony".

It is so ordered.

Dated: New York, New York
November 21, 1973

MARVIN E. FRANKEL

U.S.D.J.

CORRECTION TO THE OPINION FILED DECEMBER 4, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the complaint of COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability	69 Civ. 5303
BINGHAM & COMPANY, et al., Plaintiffs, -against- THOS. & JNO. BROCKLEBANK, LTD., Defendant.	70 Civ. 290
KELLER INDUSTRIES, INC., Plaintiff, -against- THOS. & JNO. BROCKLEBANK LTD., et al., Defendants.	69 Civ. 4644

FRANKEL, D.J.

To correct an error called to the court's attention by counsel for the cargo claimants, the court's Findings of Fact and Conclusions of Law dated November 16, 1973, are hereby corrected. The words "January-April, 1968" appearing at page 20, line 15, are deleted and there is

Correction to the Opinion Filed December 4, 1973

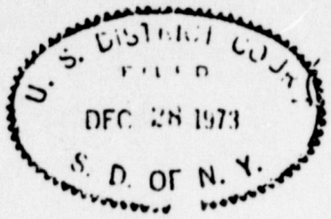
substituted therefor the words "January-May, 1969."

It is so ordered.

Dated: New York, New York
December 3, 1973

Marvin E. Frankel
U.S.D.J.

SUPPLEMENTAL MEMORANDUM FILED DECEMBER 28, 1973



ATED STATES DISTRICT COURT
OUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability	:	
BINCHAM & COMPANY, et al., Plaintiffs,	:	
-against-	:	70 Civ. 290
THOS. & JNO BROCKLEBANK,LTD., Defendant.	:	
KELLER INDUSTRIES, INC., Plaintiff,	:	
-against-	:	69 Civ. 4644
THOS. & JNO BROCKLEBANK LTD., et al., Defendants.	:	SUPPLEMENTAL MEMORANDUM

FRANKEL, D.J.

The Owner and the Charterer have been unable to resolve by agreement the question of the legal fees and expenses to which the latter is entitled under the decision of November 16, 1973.

Supplemental Memorandum Filed December 28, 1973

The Owner appears to concede the propriety of the hourly rate proposed by Charterer for its attorneys. The Owner disputes, however, the amount of time for which that rate is proposed to be charged, contending that the Charterer should not have expended so much effort because it was exposed to only a "slight risk."

The conception of a "slight risk" appears to rest on a narrow view of the Charterer's potential exposure, a view which probably seems more reliable in retrospect than it might have seemed in prospect. The court does not join in that estimate of the basis on which the Charterer was entitled to defend its interests. Among the possibilities the Charterer was entitled to contemplate was an outcome in which the Charterer and Owner were opposed to each other on the question of liability for unpaid freights rather than finding themselves, as they did in the event, on the same side of this question.

It is believed that this supplemental memorandum may supply counsel with sufficient basis upon which to reach an agreed figure for legal fees and expenses, reserving, of course, all rights

on appeal from this and other aspects of this court's decision. If such agreement is not forthcoming, the matter will be referred to a special master to hear and report.

Accordingly, counsel for the Owner and Charterer should undertake within the next ten days to reach agreement. Failing that, they should report the necessity for appointment of a special master. If possible, it would be desirable for counsel to agree on the person to be named as a special master.

Finally, the parties should plan to estimate and state at the outset of the hearing before a special master their respective views as to the proper amount to be awarded for legal fees and expenses. The ultimate decision on this question, including the award of costs for the proceeding before the special master, may be affected in suitable measure by the initial views thus expressed.

Dated: New York, New York
December 27, 1973

Marvin E. Frankel
U.S.D.J.

FINAL JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

In the Matter of the Complaint

of

COMPANIA NAVIERA EPSILON, S.A.
Plaintiff, as Owner of the M.S.
NICOLAOS S. EMBIRICOS, for
exoneration from or limitation
of liability.
- -x

FINAL JUDGMENT

69 Civ. 5303

BINGHAM & COMPANY, et al.,

Plaintiffs,

-against-

70 Civ. 290

THOS. & JNO. BROCKLEBANK, LTD.,

Defendant.
- -x

KELLER INDUSTRIES, INC.,

Plaintiff,

-against-

69 Civ. 4644

THOS. & JNO. BROCKLEBANK LTD.,
et al.,

Defendants.

- -x

This action came on for trial before the Court, Honorable Marvin E. Frankel, District Judge, presiding and the issues having been duly tried and a decision having been duly rendered, it is

ORDERED, ADJUDGED AND DECREED:

1. That the complaint of Compania Naviera Epsilon, S.A., plaintiff, as Owner of the M.S. "NICOLAOS S. EMBIRICOS" for exoneration from liability in the first of the above-entitled

actions be and the same hereby is, except as hereinafter provided, granted and that the claims filed in the said action, except as hereinafter provided, be and the same hereby are dismissed.

2. That the complaints of Bingham & Company, et al., plaintiffs, in the second above-entitled action and of Keller Industries, Inc., plaintiff, in the third above-entitled action be and the same hereby are dismissed.

3. That the defendant-claimant, Thos. & Jno. Brocklebank, Ltd., recover of the plaintiff, Compania Naviera Epsilon, S.A., in the first of the above-entitled actions legal fees and disbursements incurred to date as Time Charterers of the M.S. "NICOLAOS S. EMBIRICOS" in connection with the loss of the said vessel and the greater part of her cargo and as a defendant and claimant in said action and paid to date to Messrs. Lord, Day & Lord in the amount of $126,368.64 and to Messrs. Hill, Dickinson & Co., of Liverpool, England, in the amount of $9,956.10 making in all the sum of $136,324.74 and that Thos. & Jno. Brocklebank, Ltd., have execution therefor.

4. That the said defendant-claimant, Thos. & Jno. Brocklebank, Ltd., recover from each of the following claimants in the first of the above-entitled actions and plaintiffs in the second and third of the above-entitled actions, the amounts set forth below opposite their respective names representing freight monies due to Thos. & Jno. Brocklebank, Ltd. with interest as indicated on each such freight amount from June 20, 1969 to August 31, 1972 at 7 1/2% per annum and from September 1, 1972

to January 7, 1974 at 6% per annum and thereafter until paid at 6% per annum:

Plaintiffs-Claimants	Freight Due	Interest 6/20/69 to 8/31/72	Interest 9/1/72 to 1/7/74	Total Interest	Freight and Interest to 1/7/74
Bunge Corporation	$33,611.61	$8,059.78	$2,727.58	$10,787.36	$44,398.97
Gillespie & Company of New York, Inc.	22,340.37	5,357.04	1,812.92	7,169.96	29,510.33
Delca International Corp.	15,022.80	3,602.34	1,219.10	4,821.44	19,844.24
Jute Industries Ltd.	21,720.73	5,208.45	1,762.64	6,971.09	28,691.82
Hanson & Orth Inc.	23,508.83	5,637.22	1,907.74	7,544.96	31,053.79
R. L. Pritchard & Co. Inc.	6,226.74	1,493.13	505.30	1,998.43	8,225.17
Bigelow Sanford Inc.	2,106.35	505.09	170.93	676.02	2,782.37
Langston Bag Comapny Inc.	6,240.39	1,496.40	506.41	2,002.81	8,243.20
M. Golodetz & Co.	596.33	142.99	48.39	191.38	787.71
Chase Bag Co.	2,093.97	502.11	169.92	672.03	2,766.00
Pioneer Synthetics	11,064.65	2,653.22	897.90	3,551.12	14,615.77
Henry P. Thompson Inc.	3,536.47	847.82	286.98	1,134.80	4,671.27
Keller Industries Inc.	8,019.64	1,923.04	650.79	2,573.83	10,593.47
Totals:	$156,088.88	$37,428.63	$12,666.60	$50,095.23	$206,184.11

and that Thos. & Jno. Brocklebank, Ltd. have execution against each of the said plaintiffs-claimants in the amount of the freight and interest above stated opposite their respective names.

Dated: New York, N.Y.
January 18, 1974

Edwin E. Frankel
U. S. D. J.

The above-entitled judgment is consented to as to form.

Lord, Day & Lord
Attorneys for Thos. & Jno. Brocklebank, Ltd. and Cunard Brocklebank, Ltd.

Attorneys for Compania Naviera Epsilon, S.A., as Owners of the M.S. NICOLAOS S. EMBIRICOS and S. G. Embiricos Ltd.

Attorneys for Bingham and Company, et al

Attorneys for Keller Industries, Inc.

JUDGMENT ENTERED JAN 25 1974

NOTICE OF APPEAL FILED BY BINGHAM & COMPANY, ET AL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint	:	
of	:	69 Civ. 5303 MEF
COMPANIA NAVIERA EPSILON,S.A. Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability.	:	
BINGHAM & COMPANY, et al.,	:	
Plaintiffs,	:	70 Civ. 290
-against-	:	NOTICE OF APPEAL
THOS. & JNO. BROCKLEBANK,LTD.,	:	
Defendant.	:	

S I R S:

NOTICE IS HEREBY GIVEN that Bingham & Company, et al., defendants-claimants in 69 Civ. 5303 and plaintiffs in 70 Civ. 290, hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of the final judgment entered in the above actions on the 25th day of January, 1974 except that portion thereof which awards defendant Thos. & Jno. Brocklebank, Ltd. legal fees

and disbursements against plaintiff Compania Naviera Epsilon, S.A.

Dated: New York, N.Y.
February 14, 1974

Yours, etc.

BIGHAM, ENGLAR, JONES & HOUSTON

By DONALD M. WAESCHE JR.
A Member of the Firm
Attorneys for defendants-claimants and plaintiffs, Bingham & Company, et al.
99 John Street
New York, N.Y. 10038

TO:

[illegible] & [illegible]
Attorneys for Compania Naviera
[illegible], S.A.
[illegible]
New York, N.Y. 10006

[illegible], DAY & [illegible]
Attorneys for [illegible] & Jno.
[illegible], Ltd. and Cunard-
[illegible], Ltd.
[illegible]
New York, N.Y. 10004

DAVID P. [illegible]
Attorney for Miller Industries, Inc.
116 East 60th Street
New York, N.Y. 10022

NOTICE OF APPEAL FILED BY KELLER INDUSTRIES INC.

FILED
U.S. DISTRICT COURT
FEB 22 - 1:10 P.M. '74
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of COMPANIA NAVIERA EPSILON, S.A. Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability.	NOTICE OF APPEAL M.E.F. ~~69 Civ. 5303~~
BINGHAM & COMPANY, et al. Plaintiffs, against THOS. & JNO. BROCKLEBANK, LTD. Defendant,	~~70 Civ. 290~~
KELLER INDUSTRIES INC. Plaintiff, against THOS. & JNO. BROCKLEBANK LTD. et al. Defendants,	69 Civ. 4644 MEF

S I R S:

NOTICE IS HEREBY GIVEN that Keller Industries, Inc. defendants-claimants in 69 Civ. 5303 and plaintiff in 69 Civ.

Notice of Appeal Filed by Keller Industries Inc.

4644, hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of the final judgment entered in the above consolidated actions on the 25th day of January, 1974 except that portion thereof which awards defendant Thos. & Jno. Brocklebank, Ltd. legal fees and disbursements against plaintiff Compania Naviera Epsilon, S.A.

Dated: New York, N.Y.
February 22, 1974

Yours, etc.

DAVID P. DAWSON
Attorney for
Keller Industries Inc.
118 East 60th Street
New York, N.Y. 10022

To:

Healy & Baillie
Attorneys for Compania Naviera Epsilon S.A.
29 Broadway
New York, N.Y. 10006

Lord, Day & Lord
Attorneys for Thos. & Jon. Brocklebank
25 Broadway
New York, N.Y. 10004

Bigham, Englar, Jones & Houston
Attorneys for Bingham & Co.
99 John Street
New York, N.Y. 10038

NOTICE OF APPEAL FILED BY COMPANIA NAVIERA EPSILON, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
JAN 30 - 3:44 PM '74
S.D. OF N.Y.

- -x

In the Matter of the Complaint

of

COMPANIA NAVIERA EPSILON, S.A., Plaintiff, as Owner of the M.S. NICOLAOS S. EMBIRICOS, for exoneration from or limitation of liability.

NOTICE OF APPEAL

69 Civ. 5303 (MEF)

- -x

NOTICE IS HEREBY GIVEN that Compania Naviera Epsilon, S.A., plaintiff above-named, appeals to the Court of Appeals for the Second Circuit from so much of the judgment entered in this action on January 25, 1974, as allows the claim of defendant-claimant, Thos. & Jno. Brocklebank, Ltd. for legal fees and disbursements in the total amount of $136,374.74.

Dated: New York, N.Y.
January 29, 1974.

HEALY & BAILLIE

By: _____
Allan A. Baillie
A Member of the Firm

Attorneys for Compania Naviera Epsilon, S.A., as Owners of the M.S. NICOLAOS S. EMBIRICOS and S.G. Embiricos Ltd.
29 Broadway
New York, N.Y. 10006
943-3980

Notice of Appeal Filed by Compania Naviera Epsilon, S.A.

TO:

LORD, DAY & LORD, Esqs.
Attorneys for Thos. & Jno. Brocklebank,
Ltd. and Cunard-Brocklebank, Ltd.
25 Broadway
New York, N.Y. 10004

BINGHAM ENGLAR JONES & HOUSTON, Esqs.
Attorneys for Bingham and Company, et al.
99 John Street
New York, N.Y. 10038

DAVID P. DAWSON, Esq.
Attorney for Keller Industries, Inc.
113 East 60th Street
New York, N.Y. 10022

Excerpts From Deposition of Efstratios Koutsoukos, Master "Nicolaos S. Embiricos".

(3) * * * Deposition of Captain Efstratios Michael Koutsoukos.

* * * * * *

Direct examination by Donald M. Waesche, Attorney for Bingham & Company, Inc. et al. on Monday, Tuesday and Wednesday 18th, 19th and 20th May, 1970.

(4) Q. No. 1: Would you state your full name? A. Efstratios Michael Koutsoukos.

Q. No. 2: What is your present address? A. Alexandras Avenue 8 Athens.

Q. No. 3: On May 15th 1969 were you the Master of the m.s. "NICOLAOS S. EMBIRICOS"? A. Yes.

Q. No. 4: Do you hold any licence issued by the Greek Government? A. Yes.

Q. No. 5: What licence do you hold? A. Master Mariner Ocean Going.

Q. No. 6: Did you ever attend a course in radar navigation? A. Yes.

Q. No. 7: When? A. In 1958.

Q. No. 8: And where? A. In Liverpool, England.

Q. No. 9: How long was the course? A. It was about 15 days.

Q. No. 10: On May 15th 1969 did the m.s. "NICOLAOS S. EMBIRICOS" strand on Suvadiva Atoll, Maldive Islands? A. Yes.

Q. No. 11: What is the overall length of the m.s. "NICOLAOS S. EMBIRICOS"? A. 470′ overall as far as I remember.

Q. No. 12: What is her beam? A. 62′.

Q. No. 13: What is her depth of hold? A. 30′ 7/8″.

Q. No. 14: What was her gross tonnage? A. Her gross tonnage was 8,860 I think.

Q. No. 15: What was her net tonnage? A. 4,964.

Excerpts From Deposition of Efstratios Koutsoukos.

(5) Q. No. 16: What was her deadweight capacity? A. The deadweight capacity was 12,984 as far as I remember.

Q. No. 17: Are you quite sure of that figure? A. Not quite. It should be 12,984 or 87 but I must make sure. I do not quite remember.

Q. No. 18: Are you certain that it was not 13,050? A. I think it was a little less than 13,000. You see in the Rough Log it was 12,430 but since then we increased the deadweight by about 500 or 530 tons or more.

* * * * * *

(6) * * * Q. No. 29: What is the Ship's horse power? A. 5,000.

Q. No. 30: And what was her propeller pitch? A. 17 I think.

Q. No. 31: Captain, is there a formula which allows one to compute the speed of the Ship giving her propeller pitch and revolutions per minute? A. This is the job of the Engineer.

Q. No. 32: Captain will you answer my question. My question is is there such a formula? A. Yes.

Q. No. 33: What is the formula? A. I do not know the formula.

Q. No. 34: On May 15th was the m.s. "Nicolaos S. Embiricos" equipped with radar? A. Yes.

Q. No. 35: What was the name of the manufacturer of the radar? A. Marconi.

Q. No. 36: What was the type of the radar? A. Marconi 4.

Q. No. 37: Was the m.s. "Nicolaos S. Embiricos" built in 1958 and has she been owned by Compania Naviera Epsilon S.A. since? A. Yes.

Q. No. 38: Have you been Master of the Ship since 1958? A. Yes, but I had a break.

Q. No. 39: What time did you have a break? (7) A. I was relieved on 17th August 1963 and I was relieved by

the relief Captain until January 22nd 1964. Then I joined the Ship again.

Q. No. 40: Was the radar which was aboard the Ship on May 15th 1969 the radar which was aboard immediately after the Ship was constructed? A. The same radar since the Ship was built.

Q. No. 41: What was the pulse width of the radar beam? A. What is that?

Q. No. 42: Are you not familiar with the pulse width? What was the frequency of the transmission of the radar beam? Mr. Gabrielidis would you please put that into Greek. A. Four frequencies.

Q. No. 43: What frequencies were there? A. I know the ranges.

Q. No. 44: I am not asking for ranges. I am asking for frequencies. A. I do not know.

Q. No. 45: Was the radar equipped with the variable range ring? A. Yes.

Q. No. 46: What were the range scales? A. The range scales were 1 mile, 3 miles, 10 miles and 40 miles.

Q. No. 47: When prior to May 15th 1969 was the radar last overhauled? A. In Chittagong April 29th.

Q. No. 48: What work was done at that time? A. It was overhauled because a few tubes were out of order.

Q. No. 49: Was the radar working prior to April 29th? A. It was but when I was in Chittagong it went out of order.

Q. No. 50: In other words it did not go out of order until you arrived at the Port of Chittagong? A. I had arrived, I had dropped the anchor off Chittagong entrance and it was working perfectly alright and when the next morning the Pilot boarded the Ship I switched on the radar it was out of order.

Q. No. 51: What was the date of that Captain? A. It was April 29th 1969.

(8) Q. No. 52: What was its rated accuracy insofar as range is concerned? A. The accuracy was correct.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 53: No, what was its rated accuracy insofar as range is concerned? A. I do not know.

Q. No. 54: What was its rated accuracy insofar as bearing is concerned? A. I do not understand that.

Q. No. 55: You do not know? A. No.

Q. No. 56: Did you maintain a radar log on board the Ship? A. Radar Log?

Q. No. 57: Yes. A. No, we did not maintain a radar log.

Q. No. 58: Had you issued any orders to anyone aboard the Ship for routine maintenance of the Ship's radar? A. Yes, the Radio Officer together with myself were trying to keep the radar in good order as much as we could.

Q. No. 59: Exactly what instructions did you give to the Radio Officer in order to attempt to keep the radar in good working condition. A. Only verbal instructions.

Q. No. 60: Verbal or written, what did you tell him to do? A. To try and find whether we can locate the damage if there was any damage.

Q. No. 61: Now if the radar was working properly what was done by way of routine maintenance aboard your Ship? A. If it was working properly there was no maintenance but if I had any suspicions at the next port I would call an SAIT man to check the radar so that I was able to be sure that the radar would be always in good order and condition.

Q. No. 62: And how frequently did you call upon the SAIT man to look at the radar? A. Now and again whenever it was necessary. Sometimes every three months, sometimes every two months and sometimes I was asking the Agents to find the people they would not find in every port but whichever port I was calling at and there was an SAIT man to check the radar I was calling.

Q. No. 63: And you did that when you had some suspicion that the radar was not operating correctly. Is that correct? A. Yes.

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Excerpts From Deposition of Efstratios Koutsoukos.

(11) * * * Q. No. 94. On May 15th, 1969 was the m.s. "NICOLAOS S. EMBIRICOS" equipped with a Radio Direction Finder? A. Yes.

Q. No. 95: Who manufactured that piece of equipment? A. Marconi.

Q. No. 96: Do you remember its type number? A. No.

Q. No. 97: When prior to the stranding was it last calibrated? A. I cannot remember when it was calibrated.

Q. No. 98: Captain, I show you a photostat and ask you if this refreshes your recollection? A. I think we had one in the documents.

(12) Q. No. 99: The one which you referred to as having something to do with the compass? A. No. It was in the Official Log. Yes, this is the same.

Q. No. 100: To get the record straight is Epsilon Exhibit B.1 the calibration of the Radio Direction Finder and was it last calibrated in 1958 Captain? A. Yes.

Q. No. 101: I thought B.1 was the corrected curve of the standard compass. A. It is not.

Q. No. 102: So we were in error then? The only document to which you refer regarding calibration of Radio Direction Finder is Epsilon Exhibit B.1. Is that correct? A. Yes.

Q. No. 103: And B.1 indicates that it was calibrated in 1958? A. Yes.

Q. No. 104: Was the Ship equipped with a gyro compass? A. Yes.

Q. No. 105: Was there any gyro error? A. Yes.

Q. No. 106: What was the error? A. I think it was 2° West.

Q. No. 107: Are you referring to the compass observation book? A. Yes. 2.7° the last one on May 14th.

Q. No. 108: Did the gyro error vary from day to day? A. Oh, yes.

Q. No. 109: It did? A. Not much. Look at the book and you can see the difference.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 110: I see, Captain.

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(13) * * * Q. No. 114: Was the m.s. "NICOLAOS S. EMBIRICOS" equipped with magnetic compass? A. Yes.

Q. No. 115: And when was the magnetic compass last adjusted? A. We were adjusting the magnetic compass ourselves every day by comparing the magnetic with the gyro so we always had the error of the magnetic compass.

Q. No. 116: That does not answer my question. When was it last adjusted by shore personnel? A. I cannot remember that.

Q. No. 117: The compass observation card Epsilon Exhibit G.1 indicates that it was prepared on May 19th 1958. Is that correct? A. Yes and this was when the Ship was built.

Q. No. 118: Do you have any other compass observation card? A. Not unless there was one left on board.

Q. No. 119: Do you know of the existence of any other compass observation card? A. I do not remember.

Q. No. 120: Was the Ship equipped with an Echo Sounder? A. Yes.

Q. No. 121: Who manufactured the Echo Sounder? A. Marconi.

Q. No. 122: Did you have more than one Echo Sounder aboard the Ship? A. No, we had only one but it was the visual.

Q. No. 123: Was the Echo Sounder in good working condition when the Ship left Colombo in May 1969? A. Yes.

Q. No. 124: Who operated the Echo Sounder? A. The Chief Officer.

(14) Q. No. 125: Who else? A. The Chief Officer and myself.

Q. No. 126: Anyone else? A. Mostly the Chief Officer and myself.

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Q. No. 127: What do you mean by that. A. Because when it was necessary on the bridge. We do not use it when we are in the open sea and we use it when we are in ports in which case it means that most of the time I was on the bridge and the Chief Officer most of the time. That is why I say that mostly the Chief Officer and myself were operating the Echo Sounder.

Q. No. 128: Were your other two Second Mates capable of operating the Echo Sounder? A. Yes.

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Q. No. 137: Captain did you give a statement to the Greek Government concerning the stranding of the m.s. "NICOLAOS S. EMBIRICOS"? A. Yes.

Q. No. 138: And did you advise the Greek Government that never had a Ship under your command sustained an accident? A. Yes.

(15) Q. No. 139: Was that a true statement? A. Do you mean the loss of the Ship?

Q. No. 140: Did you tell the Greek Government never had a Ship under your command sustained an accident? A. Yes.

Q. No. 141: Is that a correct statement? A. We had some repairs.

Q. No. 142: Would you say that a stranding was an accident? A. If I lost the Ship it was an accident.

Q. No. 143: I do not mean losing the Ship I mean if you stranded the Ship would you consider that to be an accident? A. No.

Q. No. 144: You do not think so? A. In my opinion if the Ship is lost it is an accident.

Q. No. 145: In other words you have to completely lose a Ship before you have an accident, in your mind? A. This is my opinion.

Q. No. 146: Were you the Master of the m.s. "NICOLAOS S. ENBIRICOS" on March 28th, 1968? A. Yes.

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Q. No. 147: Is it not a fact that on that date the vessel stranded whilst on a voyage to Copenhagen in the vicinity of Helsinborg and remained aground until April 1st 1968? A. It was ice. We were drifting by ice whilst we were anchored off Helsinborg.

Q. No. 148: Nevertheless the Ship did go aground on that occasion? A. Yes.

Q. No. 149: And were you the Master of the m.s. "NICOLAOS S. EMBIRICOS" on November 9th, 1967? A. Yes.

Q. No. 150: Is it not a fact that on that date the vessel stranded in the vicinity of Fuga Island North of the Phillipines whilst on a voyage from Port Elizabeth to Yokohama? A. Yes.

Q. No. 151: Did you mean to mislead the Greek Government when you told them that no vessel under your command had sustained an accident? A. No.

Q. No. 152: Was the radar working properly on May 14th/15th 1969? A. Yes.

Q. No. 153: Did a Mr. Laister board your vessel whilst it was (16) stranded off Suvadiva Atoll? A. Yes.

Q. No. 154: Did you speak to Mr. Laister? A. Yes.

Q. No. 155: Did you have any discussion with Mr. Laister concerning the Ship's radar? A. Yes, we set it on.

Q. No. 156: And did you tell Mr. Laister that you had no faith in the radar? A. Yes, I did because as I told you as the radar was not in good repair I was calling at the next port a man from SAIT to repair it.

Q. No. 157: Is it correct that you had no faith in the Ship's radar? A. Whenever it was not working properly of course I did not have faith and that is why at the next port I was calling a man to repair it.

Q. No. 158: Had you ordered your watch officers not to use the radar? A. Yes.

Q. No. 159: What was the reason for that order? A. The reason was that I wanted to check it myself so that I

should have my radar always in good order. By saying I did not like anyone to use it did not mean that every officer was not allowed to see the radar. I was only switching it on and then it was at the disposal of the officer in charge.

Q. No. 160: The officer in charge could not switch on the radar without your specific authorization. Is that correct? A. Yes.

Q. No. 161: Did the radar have a custom to fading when the Ship was pitching? A. Yes sometimes.

Q. No. 162: In your opinion did the radar perform in a very satisfactory manner? A. Oh no.

Q. No. 163: Did you tell Mr. Laister that in your opinion the radar performed very unsatisfactorily? A. Yes when I was in Chittagong and that is why I called the SAIT man to repair it but since then it was perfectly in good condition.

Q. No. 164: Have you received any instructions from the Owner concerning the proper use of the Ship's radar? A. What do you mean? The radar was for the Ship's safety and that is why they fitted radar to use it always.

(17) Q. No. 165: Did you receive any specific instructions from the Owner of the vessel concerning the proper manner of using the radar? A. I cannot understand the question. The Owners were telling me to always have the radar in good order and to use it.

Q. No. 166: Is that all? A. What else?

Q. No. 167: Well the question is fairly simple. Did you receive any specific instructions from the Owner of the vessel concerning the proper manner of using the Ship's radar? A. You mean to say that had I received any instructions to keep in order.

Q. No. 168: No, the method of using the radar? A. No, they knew that I had taken a radar course in Liverpool.

Q. No. 169: Well, is the answer to the question no? A. Why no? It is not no.

Q. No. 170: I will ask you it once again. Did you ever

receive any specific instructions from the Owner of the vessel regarding the proper use of the Ship's radar? Would it help if the question was interpreted in Greek? A. The Owners have always said to me to keep the radar in good working condition so that the radar should be in a position to work properly.

Q. No. 171: Is that the only instruction you received from the Ship's Owner? A. Yes.

Q. No. 172: What Company operated the vessel? A. S.G. Embiricos Ltd. London.

Q. No. 173: Did you receive any instructions concerning the proper use of the Ship's radar from S. G. Embiricos Ltd.? A. Yes, the interpreter explained to you.

Q. No. 174: You mean the answer you gave to the previous question? A. Yes, what else can I say. They gave me instructions to keep the radar in good order and condition.

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(23) * * * Q. No. 248: Captain, was the m.s. "NICOLAOS S. EMBIRICOS" on a voyage from Ceylon to Durban, South Africa, at the time that (24) she stranded? A. Yes.

Q. No. 249: When did she strand? A. On the 15th May.

Q. No. 250: At what hour? A. It was 0122.

Mr. Waesche: Mr. Baillie, may I have the crew list of the m.s. "NICOLAOS S. EMBIRICOS".

Q. No. 251: As Master you do not stand a watch do you? A. No unless necessary.

Q. No. 252: What watch did your Chief Mate, Mr. Boulmetis stand? A. Chief Officer, 4-8.

Q. No. 253: And what watch did your Second Mate, Mr. Marinatis stand? A. 8-12.

Q. No. 254: And what watch Mr. Alexopoullos stand? A. 12-4.

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Q. No. 255: And was Mr. Alexopoullos standing watch at the time the vessel stranded? A. Yes.

Q. No. 256: Was the crew of the m.s. "Nicolaos S. Embiricos" on a basis of an 8 hour day? A. Yes.

Q. No. 257: And if they worked over 8 hours per day did they get overtime? A. Yes.

Q. No. 258: Did Mr. Alexopoullos receive the same basic wage that Mr. Marinatis obtained? A. No, I think it was £5 per month less.

Q. No. 259: What was the basic wage that Mr. Marinatis received per month? A. I think it was £79.5.0d.

Q. No. 260: Is that the going rate according to the Greek standards for a Second Mate? A. Yes, but I do not remember the exact figure. He was receiving the basic wages. In addition to that he was receiving £115 per month plus the basic wages.

Q. No. 261: Plus the basic wages? A. He was reaching to £115 per month.

Q. No. 262: The basic wages was £79 and he was rising to £115? £115 was not in addition to the £79? A. Oh no, including the basic wages but in addition to that all the crew were receiving 11% bonus plus the overtime.

(25) Q. No. 263: Did you have 8 sailors aboard the Ship? A. Yes.

Q. No. 264: Did four of the sailors stand deck watches? A. No, two for each watch. When we steer with the hydraulic we must have two men on the bridge, two sailors and one officer but when we use the automatic we have only the officer and one look-out man.

Q. No. 265: Normally when the Ship is at sea is she on automatic pilot? A. According to the weather. If the weather is good then we use the automatic pilot in which case we use one sailor and one officer.

Q. No. 266: On the voyage from Ceylon up to the time

the Ship stranded was the Ship on automatic pilot? A. Yes, after we cleared from Ceylon.

Q. No. 267: At the time that she stranded do you know whether or not the Ship was on automatic pilot? A. She was on automatic pilot.

Q. No. 268: Who was standing the watch with Mr. Alexopoullos? A. One A.B. by the name of Nicolaos Glymenakis.

Q. No. 269: Would the lookout stand his watch on the bridge? A. Yes.

Q. No. 270: Did you give any orders for the lookout to check the Ship's navigation lights periodically during that time? A. Yes, it was written instructions on top of the chronometer.

Q. No. 271: In order to do that would he have to leave the bridge? A. No he would not have to leave the bridge because we have aboard. When one light goes out the bell was ringing.

Q. No. 272: And your instructions did not mean that the lookout had to physically make the rounds of the Ship to check the Ship's navigation lights to see that they were on? A. As soon as I heard on the bridge it was automatically seen. If one light was going out the bell was ringing.

Q. No. 273: Whose duty was it to awaken the next watch to come on out? A. The man who was on the bridge on watch, I mean the A.B.

Q. No. 274: The lookout? A. Yes.

Q. No. 275: And, naturally, he would have to leave the bridge to do that? A. Only for five minutes.

(26) Q. No. 276: Did the A.B. have any other duties then those which you mention? A. To watch if a Ship is on the horizon and if the officer in charge did not see it he must report it to the officer in charge.

Q. No. 277: Any other duties? A. What duties, he was watching on the bridge?

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Q. No. 278: That is all? A. That is all. He cannot leave the bridge only to relieve the other watch.

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(28) * * * Q. 302: The m.s. "NICOLAOS S. EMBIRICOS" was built in 1958 was it not? A. Yes.

Q. No. 303: And when it was purchased by Compania Naviera Epsilon, S.A. in 1958 the Ship was then equipped with a full set of charts for world wide navigation was it not? A. Yes.

Q. No. 304: It was also equipped with sailing directions for world wide navigation. Is that so? A. Yes.

Q. No. 305: And light lists. A. Yes.

Q. No. 306: I am going to place before you chart Epsilon Exhibit E. Was that chart aboard the Ship in 1958 when she was bought by Compania Naviera Epsilon S.A. A. Yes.

Q. No. 307: The chart is corrected in accordance with notice to Mariners to what date? A. The last correction was 1956.

Q. No. 308: 1956? A. Yes.

Q. No. 309: Does the chart contain any corrections or additions since 1956? A. No.

Q. No. 310: Was the light list Epsilon Exhibit P aboard the vessel when it was purchased in 1958? A. No, this is 1967.

Q. No. 311: Are there any corrections in the light list from 1967 until the time the Ship stranded? A. No corrections but we were following the Notices to Mariners. When we had any suspicions we were using Notices to Mariners.

Q. No. 312: You only had 8 Notices to Mariners aboard the vessel? A. Yes, at the time of the stranding.

Q. No. 313: Does the book contain any corrections whatsoever to your knowledge? A. There might be, I do not remember.

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Q. No. 314: I now again show you West India Pilot Epsilon Exhibit O and I ask you if that booklet was aboard the Ship when it was purchased? A. Yes.

Q. No. 315: And was the supplement Epsilon Exhibit O.1 aboard when it was purchased? A. Yes.

Q. No. 316: What officer aboard your Ship had the duty of keeping charts and light lists current in accordance with the issuance of Notices to Mariners? A. The Second Officer, Marinatis.

(30) Q. No. 317: Do you know whether he fulfilled his duties in that respect? A. He used to but I do not think he fulfilled it completely.

Q. No. 318: Did you periodically have an inventory made of all of the sailing directions, charts and other navigational publications which were aboard the Ship? A. Unfortunately we did not have it. We had for all the charts corrections which we are using and additional charts we used to buy we entered in the book. That book was handed over to me when we bought all the charts from Kelvin & Hughes.

Q. No. 319: At what time were these purchased? A. When they supplied all the charts and the sailing directions in 1958 and when we used to buy any other charts we used to enter them in there. Unfortunately we did not pick it up from the Ship.

Q. No. 320: Did you periodically send to the Shipowners or the Ship's operating Company a list of the navigational charts and navigational publications which were abroad the Ship? A. No, the Owners knew that we had the book with the complete set of charts for all over the world and whenever I wanted new charts and whenever I used to go to a strange port I used to telegraph to either my Owners or my Owners' representative to send me new charts. For instance if I used to go to New Orleans and I wanted a chart I used to telegraph either to my Owners or to my Agents to send me new charts so

that I had the right charts for the right places and the Owners never used to refuse.

Q. No. 321: Did you receive funds from the Owners or the managing or operating company with which to run the Ship? A. No, but I used to draw money from the Ship's Agents wherever I used to go. I had the authority from the Owners to draw any money I wanted for either purchasers or for crew's advances.

Q. No. 322: Up to what amount? A. Any amount. They used to write to the Agents on board the m.s. "NICOLAOS S. EMBIRICOS" saying you can give him any money he requires in cash.

Q. No. 323: And you had to, of course, account to the Owner or Operating Company how you spent that money? A. Yes.

Q. No. 324: And you did? A. Yes.

(31) Q. No. 325: So then the Owner should have had a record of any charts or navigational publications which you purchased? A. Yes, because when I used to buy them I did not pay them cash but I got them from the Agents and used to sign the invoice which was sent to the Owners.

Q. No. 326: So therefore your Owners should have known that the chart which you were using to navigate from Ceylon to the Naldives was issued in 1956?

> Mr. Baillie: I object to the form of the question on the ground that it calls for a conclusion that he cannot possibly draw on the basis of the information as yet.

Q. No. 327: Well, in any event, the Owners did receive invoices for all navigational publications which you purchased. Is that right? A. Yes, but they never refused to supply me any charts.

Q. No. 328: Did the Owners send you through Ship's

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Agents Notices to Mariners? A. Yes, I received the last Notices in Colombo, one just before we stranded.

Q. No. 329: Did you keep on board the Ship the Notices to Mariners which you obtained through the Ship's Agents? A. Yes, but I could not keep them for the 11 years.

Q. No. 330: For how long a period did you keep them? A. As long as they were needful.

Q. No. 331: I notice that the list Epsilon Exhibit O has Notices to Mariners going back to 1965. Is that correct? A. Yes, if it is written there it should be correct.

Q. No. 332: Did you make it a practice to keep all Notices to Mariners for a period of 4 years? A. Yes, 4 years.

Q. No. 333: Did you keep the Notices to Mariners which you obtained through the Agents? A. Yes, I keep them but we had some more which we did not keep.

Q. No. 334: Would you explain that please? A. Probably I had more on board.

Q. No. 335: That you left aboard the Ship? Well why did you take those that are listed on Epsilon Exhibit O and leave some others? A. Because Mr. Laister picked them up.

Q. No. 336: Were you with him when he picked them up? A. Yes.

Q. No. 337: Did he take all of them that were within your sight? (32) A. No because there were some left in a cupboard and mixed up with lots of books.

Q. No. 338: Captain, did you read the sailing directions Epsilon Exhibit O to obtain information relative to conditions which existed between Ceylon and the Maldives? A. Yes.

Q. No. 339: And did you do so before departing from Ceylon? A. No after departing on my way from Lourenco Marques to Ceylon.

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Q. No. 340: Did the Ship proceed from Lourenco Marques to Ceylon in April 1969? A. Yes.

Q. No. 341: And on that voyage did you proceed through the one and half degree channel? A. Yes.

Q. No. 342: Did you encounter any current in an area roughly 200 miles North East of the one and half degree channel? A. 200 miles?

Q. No. 343: Yes, Captain let me make my question a little bit clearer. Did you encounter any current when proceeding from Lourenco Marques to Ceylon in the area from the one and half degree channel to the position marked Noon on the chart Epsilon Exhibit E? A. There are two positions marked Noon on that chart. This is on my way from Colombo.

Mr. Baillie: That is not the question Mr. Waesche asked Captain.

Q. No. 344: I refer now to the area from the one and half degree channel to the position marked Noon in the compass roads in Epsilon Exhibit E.

Mr. Baillie: Mr. Waesche is just using this Noon position to indicate the area he is talking about.

A. I want to make it clear, on my way from Colombo I encountered a North going current.

Q. No. 345: North going current for the position Noon? A. This is the position I was going from Colombo.

Mr. Baillie: Counsel understands that. Mr. Waesche is merely designating a position on the map. He does not mean that that is your Noon position.

A. Here I encountered a North going current.

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Q. No. 346: Here meaning Noon on Epsilon Exhibit E as written in the compass rose? (35) A. Yes on the 14th it was 3½ miles north going current.

Mr. Waesche: Captain, if you do not understand any questions that I put to you please tell me.

Q. No. 347: Captain, when you were proceeding through the one and half degree channel and the area to the North East of the channel on your voyage from Lourenco Marques to Ceylon in April 1969 did you encounter any current in the one and half degree channel? A. No.

Q. No. 348: Did you encounter any current while the vessel was proceeding from one and half degree channel to an area which is designated by a position marked Noon in the compass rose on chart Epsilon Exhibit E. A. Yes, this is what I do not understand.

Q. No. 349: Again, that is on the voyage to Ceylon from Lourenco Marques in April? A. Yes, I do not remember encountering the current here. I remember that I encountered the current near here.

Q. No. 340: Near Ceylon? A. Yes.

Q. No. 351: And that is near the position marked Noon. You encountered a North current on your voyage from Lourenco Marques to Ceylon in the area marked Noon at about Lat. 06°20′. Now Captain in view of the fact that you did not encounter any current either in the one and half degree channel or in the area to the North East of one and half degree channel while on your voyage from Lourenco Marques to Ceylon in April did you assume that the vessel would not encounter any current in that area during her voyage from Ceylon to Durban in May of 1969? A. Yes, I did not expect to encounter any current having the experience of the previous voyage.

Q. No. 352: Do you believe that the current in the area

of the Indian Ocean remains constant throughout the twelve months of the year? A. No.

Q. No. 353: Captain before leaving Ceylon on your voyage towards Durban in May of 1969 did you consult the Indian Ocean current charts Epsilon Exhibit N? A. Yes, the second day of my sailing from Colombo.

Q. No. 354: And did you consult the charts for the month of May? (34) A. Yes, the second day as I told you.

Q. No. 355: Now actually there are two current charts for Epsilon Exhibit N for the months May/June/July are there not? A. Yes, two pages.

Q. No. 356: And the page on the left of the booklet contains current roses. Is that correct? A. Yes.

Q. No. 357: Now the current rose on the chart for May/June/July contains an indication that there was a current setting towards the South East near the Island of Ceylon. Is that correct? A. Yes, I can see that.

Q. No. 358: However there is no indication on the current chart that there is any current whatsoever in one and half degree channel. Is that correct?

Mr. Baillie: I disagree with that.

Mr. Waesche: I am asking the Master.

A. There is no mark.

Q. No. 359: And there is no mark indicating current to the North East of one and half degree channel. There is no indication of any current? A. I do not see any indication.

Mr. Baillie: I object to the form of the question.

Q. No. 360: Let us turn over to the right hand side where there is a chart which contains current information too. Is there an indication that there is a current setting to the South East in the area towards Ceylon? A. Yes, here you mean.

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Q. No. 361: Let us label that 1. Now is there any indication on that chart of any current in one and half degree channel? A. No indication here.

Q. No. 362: Is there any indication of a current in the area towards the North East of one and half degree channel? A. There is not.

Mr. Blackiston: That is a fine way to read those current charts.

Mr. Baillie: No Captain, I do not think you are right.

Q. No. 363: Well then Captain is it fair to say that the current charts which were aboard your vessel did not give you any indication that there would be a South Easterly current in one and half degree channel and in the area immediately to the North East of one and half degree channel in the month of May?

Mr. Baillie: I object to the form of the question on the (35) ground that the charts certainly do show this.

Q. No. 364: Did you answer "yes" Captain? Let us make it clear again. A. I cannot understand that because I have here North going current. I do not see the meaning. Here it gives a North East current.

Q. No. 365: Thank you Captain. When you proceeded through one and half degree channel in April while on your voyage from Lourenco Marques to Ceylon was the Ship's radar on? A. Yes.

Q. No. 366: Were you on the bridge? A. Yes.

Q. No. 367: Were you able to obtain any radar echoes from the Islands? A. Yes, but I did not get any.

Q. No. 368: Was your radar operating properly at that time? A. Yes, it was about 6 o'clock in the afternoon.

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Q. No. 369: Your radar was repaired in Chittagong? A. Until I reached Chittagong it was working properly. When I dropped the anchor in Chittagong at 3 o'clock in the morning the radar was on and was functioning properly. After I anchored I switched it off and when the Pilot boarded the Ship it was out of order.

Q. No. 370: I understand that but the radar was repaired in Chittagong? A. This is what I want to tell you. As soon as I noticed that something went wrong I asked the Agents and they sent an SAIT man on board and put it right again.

Q. No. 371: Do you know whether your radar was being used during the midnight watch May 14th/15th until the Ship stranded on May 15th? A. On May 15th, no it was not being used.

Q. No. 372: Why not, Captain? A. Before I passed there you mean?

Q. No. 375: Yes. A. Because I knew from the previous voyage that there was not any objects and I did not think it necessary to use it again because there is no land only a few trees there.

Q. No. 374: The sailing direction which you had aboard the Ship Epsilon Exhibit O does not contain any information whatsoever regarding radar observations of Atolls in the Maldive Islands does it? (36) A. I do not think it mentions anything in this book about radar objects.

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Q. No. 382: Captain, I have now placed before you the chart which was in use whilst you were navigating from Ceylon to the Maldives Epsilon Exhibit E. Are course lines drawn on that chart? A. Yes.

Q. No. 383: Who drew the course lines? A. I did.

Q. No. 384: What was the course of the Ship upon leaving Colombo? A. I must see the book. It is 232° I think.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 385: 228°? A. Yes.

Q. No. 386: And did the Ship steer 228°? 228° was a true course. A. Yes, but we always give the allowance but we keep on the log book the true course.

Q. No. 387: And you made out on the chart the true course? A. Yes.

Q. No. 388: When did you leave Colombo? A. May 13th.

Q. No. 389: At what hour? (37) A. At 8 o'clock in the morning.

Q. No. 390: Did you obtain a Noon position on May 13th? A. Yes, here it is.

Q. No. 391: It is written on the chart. Let us label that 1 if we may Captain. Now did you obtain the Noon position? A. With the sun. That gives you a line of latitude.

Q. No. 392: It only gives you one line? A. Yes.

Q. No. 393: Assuming no current, calm sea, what speed would the m.s. "NICOLAOS S. EMBIRICOS" make? A. About 15 knots.

Q. No. 394: Laden as she was on your departure from Colombo? A. Yes, because she was not heavily laden. We had only 22′ draft instead of 31′ which meant the Ship was very light.

Q. No. 395: So she would make about 15 knots? A. Let me see, the average speed, yes 15 knots.

Q. No. 396: Now was your Noon position 1 based upon a sight of the sun plus the speed of your Ship from Colombo? A. Yes.

Q. No. 397: What were the weather conditions on May 13th? A. I must see the Log Book. The weather was West South West force 3.

Q. No. 398: Visibility? A. Visibility good at that time.

Q. No. 399: The condition of the sea? A. Slight sea.

Q. No. 400: How long did the Ship continue to steer 228°(T)? A. Until Noon.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 401: And how long did she continue on that course? A. Until Noon and from Noon changed course to 230°(T).

Q. No. 402: Noon what date, Captain? A. The same date the 13th.

Mr. Blackiston: That makes it 8 o'clock in the morning until Noon.

Q. No. 403: Did you change course Noon May 13th? A. Yes.

Q. No. 404: Is your course line indicated on the chart? A. No I kept this line, a set line, but I changed course to 230°(T).

Q. No. 405: Captain, is it not correct that you changed course to 230°(T) at Noon on May 14th? A. It is correct.

(38) Q. No. 406: What did you say Captain? A. I changed course.

Q. No. 407: Yes, but what date? A. On the 13th.

Q. No. 408: You are sure it is not the 14th Captain? A. Let me see.

Q. No. 409: Captain would your Course Recorder be of assistance? A. Just a second, probably I made a mistake here. The Log says the 13th.

Q. No. 410: Captain was the m.s. "NICOLAOS S. EMBIRICOS" equipped with a Course Recorder? A. Yes.

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Q. No. 412: Captain, the Course Recorder now placed before you starts at 9 a.m. does it not? A. Is this mine.

Q. No. 413: Yes, it is a photostat copy. A. It does not give the date.

Q. No. 414: But it does start at 9 a.m. A. Yes.

Q. No. 415: On what course was the vessel proceeding according to that? A. It looks 230°.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 416: And how long did she remain at 230°? A. As far as there.

Q. No. 417: Did she remain at 230° for approximately 3 hours and 45 minutes? A. Yes, but we gave 2° on account of the weather, the wind you see.

(39) Q. No. 418: Captain, I again ask you, I am a bit confused. Are you sure that you changed course at Noon on May 13th? A. The Log book says so.

Q. No. 419: Did you also change course at Noon on May 14th? A. Yes.

Q. No. 420: What course did you change to at Noon on the 14th? A. To 233°.

Q. No. 421: Did you also obtain a Noon position on the 14th? A. Yes.

Q. No. 422: And how did you obtain that position? A. With the sun.

Q. No. 423: Again a line of latitude? A. I took a position line at 8 a.m.

Q. No. 424: How did you obtain that position? A. With the sun.

Q. No. 425: This is a line on the morning of May 14th? A. Yes.

Mr. Waesche: Let me label that 2, and your Noon position on the 14th I label 3.

Q. No. 426: What time was that Captain? A. I can say almost 8 a.m. in the morning Ship's time.

Q. No. 427: Now there is a course line drawn on a chart from your Noon position to a position in one and half degree channel is there not? A. Yes.

Mr. Waesche: I will mark the position in one and half degree channel with 4.

Q. No. 426: Did you lay off that course line? A. Yes.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 429: And did you instruct your Mates on watch to steer the course as laid off on the chart? A. Yes.

Q. No. 430: When did you anticipate that you would reach position 4? A. 11.45 on the 14th.

Q. No. 431: That was based upon dead reckoning was it not? A. With the weather conditions.

Q. No. 432: Did you leave orders for the men on watch to change course upon reaching position 4? A. Yes.

Q. No. 433: What course was the Mate supposed to change to? A. I think 247°(T).

Q. No. 434: And what time was he supposed to change course? (40) A. 11.45 p.m. on the 14th.

Q. No. 435: Captain, you believed did you not that when you reached position 4 the position would be 16 miles or thereabouts to the North of Suvadiva Atoll? A. I believed not only to be 16 miles North of Suvadiva Atoll but more than 20. I believed in my opinion because of the weather conditions. I thought that the Ship would be drifting Northwards.

Q. No. 436: And in setting off the course from your Noon position 3 to position 4 you did not take into consideration any set of the current did you? A. I did take into consideration.

Q. No. 437: You did take into consideration? A. Yes, and may I explain to you how I did it?

Q. No. 438: Yes: A. If you see here the route which I drew from Colombo at Noon, 14th. I drew this course is it right?

Q. No. 439: This course refers to the course line which I will now label 5. Is that correct? A. When I found out that the Ship was almost 3½ Miles North of my course which I set from Colombo and I set the course to pass 16 miles of Suvadiva Atoll and having in mind that I was off my course almost 3½ miles North of my course I thought that on passing the one and half degree channel

instead of going southwards I was to go north. Therefore, I was expecting to pass more than 16 miles North of Suvadiva Islands.

Q. No. 440: Captain, I ask you to assume that the m.s. "NICOLAOS S. EMBIRICOS" is steering a course of 233°(T) and has maintained that course for 11¾ hours during which time she has covered a distance of 165 miles in the area through which she is traversing and there is a current setting in the direction of 105°(T) at a speed of 1.5 knots what under those circumstances would be the course made good and the speed made good for the Ship? A. That is something fantastic because I had to face the coming wind.

Q. No. 441: Just for the purpose of my question assume these facts. A. I am not going to reply because I do not want to make this assumption.

> Mr. Baillie: Captain, Mr. Waesche is asking you a hypothetical question. Do not pay any particular attention as to what (41) actually happened.

A. I repeat that I cannot make any hypothetical answer because I knew that I had the wind to oppose. The Ship was light and I had to oppose the wind.

> Mr. Baillie: Do not pay any attention to what you think the real facts are. Answer his question on the basis of his assumptions.

A. If the current was known to me as having a direction of 105° then I could have given more to the starboard. Is that the answer you expect from me?

Q. No. 442: No Captain, my question was what would be the course made good for the Ship assuming the facts that I gave to you. A. Then, of course, I could have given a little more to the starboard.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 443: All I want you to do at this time Captain is to answer the question and that is what would be the course made good given the facts that I ask you to assume? A. I cannot understand it. I cannot answer to that question.

Q. No. 444: Why not, Captain? A. Because I give you my point of view that I cannot answer a hypothetical question.

Q. No. 445: Captain start from Noon position May 14th. Suppose you travelled 165 miles, this is the course you are steering and assume that you have got current that has taken you roughly this way at a speed of 1.5 knots at a direction of 105° now can you figure out where you would be at the end of that time? A. About 3 or 4 miles of Suvadiva Atoll.

Q. No. 446: Captain, what I am asking for in the question that I gave you is the course of the Ship made good. Can you figure that out for me? A. Yes.

Q. No. 447: Would you do it please? A. You mean to say that I have to figure that I had a current?

Mr. Baillie: Do you use these maneuvering boards, Captain?

A. Mr. Waesche wants to know whether I had to oppose a hypothetical current?

Q. No. 448: Do you know how to use a maneuvering board Captain? A. Yes.

Q. No. 449: Captain, I will place before you a maneuvering board Cargo Exhibit III. Were any such maneuvering boards on board the m.s. "NICOLAOS S. EMBIRICOS"? (42) A. We never used them.

Q. No. 450: How do you determine the course made good when you know that the Ship is encountering a current? A. We figure out the direction of the current

and then the speed made good and then if the current is from the starboard side we have to change course more to the starboard to oppose the current.

Q. No. 451: How do you know how much alteration of course you have to make? A. We draw a triangle and then we say so many hours, so many miles and then instead of saying 240° in order to reach there we must set a course further off.

Q. No. 452: That is exactly what I am asking you to do. A. This is what you want?

Q. No. 453: Yes. Given the facts in my question will you please figure out for me the course and speed of the Ship made good? A. Yes.

Q. No. 454: What do you want?

Mr. Baillie: A piece of paper?

A. Yes. 1.5 knots did you say, and setting in a direction of 105° for 11¾ hours.

Q. No. 455: If it is easier for you say 12 hours. A. That makes 18 miles so we have to draw another line to oppose it so this is the new course.

Q. No. 456: Well, what is that course? A. 233°.

Q. No. 457: From Noon position? A. Yes. Makes 252°.

Q. No. 458: Thank you, Captain. May I have the piece of paper upon which the Master was drawing lines in order to answer my question marked Cargo Exhibit IV, Mr. Vanenzuela. Captain, what were the weather conditions which existed on the 14th May 1969? A. 14th May, did you say?

Q. No. 459: Yes. A. We had a West North West wind force 6, Beaufort scale.

Q. No. 460: Beaufort scale? A. Yes. Rough sea and rain squalls.

Q. No 461: Did those conditions exist during the en-

tire day? A. Yes, the entire day because every 4 hours we make entries in the Log book. At 4 o'clock p.m. the wind force was 5, at (43) 8 o'clock force 5 and at 11.45 when we changed course it was South West force 5.

Q. No. 462: What were the conditions of visibility on that day? A. Moderate visibility, at 3 p.m.

Q. No. 463: And during the other hours? A. At midnight it was good weather, it was clear weather.

Q. No. 464: According to your Log? A. Yes, this is the rough Log.

Q. No. 465: In answering questions as to weather conditions you were referring to the Ship's Rough Log Epsilon Exhibit A? A. Yes. The same thing must be in the official Log book.

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(44) Q. No. 476: Did you attempt to communicate with this Ship after you stranded? A. With that Ship?

Q. No. 477: Yes. A. No we could not.

Q. No. 478: Why? A. Because we were taking soundings and she proceeded but I do not think she escaped more than a mile or ¾ mile of Suvadive Atoll.

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(47) Mr. Blackiston: May we have the Indian Ocean currents folder Exhibit N.

Q. No. 512: Captain, looking again at the Indian Ocean currents booklet Epsilon Exhibit N we see in the page for February, March and April, if you would look at that for a moment, we see here an arrow in the general direction of the North e.g. in the South of the one and half degree channel an arrow pointing in a general North Easterly direction.

Mr. Waesche: Would you label it Mr. Blackiston?

Mr. Blackiston: What shall I call it, A?

Mr. Waesche: A is fine.

Q. No. 513: And we see to the North of the Maldive Islands an arrow marked B pointing in the general Westerly direction. We turn the page and for the page May, June and July we see an arrow to the northern part of the Maldive Islands marked C pointing in the general South Easterly direction. Is that correct? A. Yes.

May the record indicate that the Captain was referring to the arrow that points in a general North Easterly direction immediately to the South—D.

Q. No. 514: And it is true is it not, Captain, that the direction of the current in the Indian Ocean and in the general area that we are talking about varies according to the season. That is so, is it not? A. Well, according to the books, yes.

Q. No. 515: And we notice in the chart for May, June and July that we have been looking at an arrow indicated by the numeral 1 which is to the South West of Ceylon and between Ceylon and the one and a half degree channel which points in a South Easterly direction. Is that correct? A. Yes.

Q. No. 516: And also off the Coast of Ceylon further North (I will mark that E) is an arrow pointing in the same direction, namely South East, or perhaps a little bit more to the South? A. Yes.

Q. No. 517: Captain, referring to the West Coast of India Pilot Epsilon Exhibit O which I think you testified was on the Ship, did you during the voyage from Colombo sailing towards the Maldive Islands review the section of this book dealing with the currents of the Indian Ocean? (48) A. Yes.

Q. No. 518: Did you examine page 14 of that book? A. I do not recall.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 519: Is it correct that on page 14 which is entitled General surface current inherent of the Arabian Sea that in the areas of the Indian Ocean shown by the particular upper right hand diagram which relates to currents in the months of February to April the currents in the area in question are principally directed in a general Westerly direction? A. Yes.

Q. No. 520: Whereas for the months commencing with the month of May the currents are in substantially exactly the opposite direction? A. Yes.

Q. No. 521: Also referring to the following page of the same Exhibit relating to Indian Ocean currents and under the heading of South West Monsoon do you remember this statement appearing towards the bottom of page 15 entitled variability of current—"The monsoonal drifts in the open sea show large amounts of variation of direction so that occasional currents setting towards any part of the compass may be experienced."? A. Yes.

Mr. Blackiston: May we see the chart which is marked Epsilon Exhibit E.

Q. No. 522: Captain we have marked here on Exhibit E the word "Noon" and the numeral "1" which was what you believed to be your Noon position on May 13th. Is that correct? A. Yes it is correct.

Q. No. 523: That was not what is known as a fix was it? A. It was a Noon position taken by the sun and the estimated speed of the Ship. That is a combination of dead reckoning and a line of position but it was not what is known as a fix.

Q. No. 524: Do you know what I mean by fix? A. Yes, of course.

Q. No. 525: What is a fix to you? A. A fix is something that is definite, it has no estimate in it.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 526: Yes, but in this particular case the speed was estimated and the Noon position was fixed. A. That is correct.

Q. No. 527: Now a fix is an observation of two celestial bodies so that the line crosses and definitely determines your exact position and that was not what was done for the Noon (49) position on February 13th? A. No.

Q. No. 528: And when was the next celestial observation? A. The next morning—here.

Q. No. 529: Appoint a figure 2 on the chart. And that was ascertained in the same manner? A. Yes.

Q. No. 530: That is dead reckoning of estimated speed and the course steered through the water combined with the observation of the sun? A. Yes. Firstly we estimate the dead reckoning position and then we take the observation. We get the figures and we draw the position line.

Q. No. 531: And in either one of these positions that we have indicated on the chart 1 and 2 was any current applied to your dead reckoning position? A. Yes, I did not know until I made the observation. I did not know whether I had any actual current but because I had the wind from my port bow I figured that I would have been further North of my true course.

Q. No. 532: You are talking about wind now but as far as the set of the current was concerned there was no application of that to your position? A. No.

Q. No. 533: So that the position in item 1, just assume if there had been an appreciable current that position could have been in error as a result of the set of the current? A. Yes.

Q. No. 534: And the same applies to the position shown in 2? A. No, as long as I had the second position this should be correct.

Q. No. 535: This meaning what Captain—3? A. After I take this position line 2.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 536: You advanced your line of position? A. This is the position then I say what course I was doing 233° with the speed of the Ship from 8 o'clock until Noon. I do not know how many knots I had figured. I say that dead reckoning again was many miles from 8 o'clock to 12 o'clock. Then I transferred this first position line on to the second position line.

Q. No. 537: Meaning position line 2 to position line 3? (50) A. This should be the fixed position.

Q. No. 538: In that third position you also have the estimated factor? A. Yes, we must always have the estimated factor while we are at sea, unless I have two objects to take bearings.

Q. No. 539: Correct. A. And from this position I discovered that instead of being here I was further North—almost 3½ miles.

Q. No. 540: Which turned out obviously to be an error? A. Not an error, either wind or the current.

Q. No. 541: Well, Captain, if that had been a correct position? A. This is the correct position.

Q. No. 542: This indicating what, Captain? A. No. 3.

Q. No. 543: If that was a correct position then you would have cleared the channel would you not? A. Yes.

Mr. Waesche: I object to the form of the question.

Mr. Blackiston: I will persist in the question.

Q. No. 544: Is that correct Captain? If this position was correct you would have cleared the channel steering the course to 233° (T)? A. And at 11.45 we changed course to 247°.

Q. No. 545: What is the width of the channel? A. About 50-56 miles.

Q. No. 546: Did you set your course to pass about 16 miles North of Suvadiva Atoll? A. Yes.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 547: Why did you not set the course to pass immediately in the middle? The channel is 56½ miles wide? A. I was afraid of the North Atoll because the wind was blowing from my port bow I was afraid that I might be drifting northwards.

Q. No. 548: In other words you did take into consideration the wind but you did not apply any current to your position? A. Of course I did take into consideration wind then current because the season was starting which means that the current must not be so strong at the beginning.

Q. No. 549: Captain, you had a conversation with Mr. Parkin in Athens? A. Yes.

Q. No. 550: And you remember you gave a Statement to him? (51) A. Yes, I did give a Statement. I remember that it was a little afterwards when I got out of the hospital. I stayed in the hospital three weeks. The Doctor would not allow me to move.

Q. No. 551: I am not interested in the details. A. Yes, I did give a Statement to Mr. Parkin he came to my home together with Mr. Astras.

Q. No. 552: Captain, did you remember in the statement that you gave to Mr. Parkin.

Mr. Waesche: I object to the form of the question.

Q. No. 553: Captain, in the statement which you gave to Mr. Parkin did you say: "I knew by reference to the Indian Ocean current charts that a South Easterly current had been experienced in the vicinity of the one and half degree channel but as I had not met with any such current on the inward passage to Colombo I did not anticipate any substantial South Easterly drift"? A. Yes, I remember.

Mr. Waesche: I withdraw my objection.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 554: Again, Captain, referring to the West Coast of India Pilot book which you had on board the Ship which is marked Epsilon Exhibit O after you left or during the voyage from Colombo towards the Maldive Islands did you review the Chapter 2 of that book which is entitled "Maldive & Laccadive Islands"? A. Yes.

Q. No. 555: Yes, you did review that? A. Yes, I did on my way to Colombo. I was reading this all the time.

Q. No. 556: You remember reading the inhabitants of the Maldives are not permitted to accept any gifts without the sanction of the Sultan and this order is enforced by the head of the villagers? A. Yes, and I noticed that when the boats were coming alongside the Ship they refused any gifts from us.

Q. No. 557: On the same page 55 do you remember reading also this statement which is in the paragraph entitled Maldive Islands — General remarks — By night the vessel should only pass through the four larger passages between the Atolls and not even through these unless the entrance has been passed before dark or the latitude is accurately known. This being the one and half degree channel. So that is one of the (52) four larger channels. Captain, referring to Lights and Tides of the World Part I 1967 Epsilon Exhibit P could you tell whether there was any lights at the entrance to the one and half degree channel? A. There was neither lights nor beacons.

Q. No. 558: And was that confirmed by your own personal observations while you were grounded? You were aground on the Suvadiva Atoll for an appreciable period of time. A. Almost 27 days.

Q. No. 559: And did you look around you at the area in question? A. Every day and night.

Q. No. 560: And did you see any lights? A. No.

Q. No. 561: Or buoys? A. Neither.

Q. No. 562: Captain, I think you said that you took a

sun observation on the morning of May 14th? A. Yes, May 14th or 15th.

Q. No. 563: No, it would not be the morning of May 15th because you were grounded. That was a fix on the 15th? A. Yes.

Q. No. 564: When did you take that fix? A. When we grounded early in the morning.

Q. No. 565: What hour of the morning? A. Could have been 5:30 or 6 o'clock I do not remember.

Q. No. 566: What were the weather conditions in the early morning of the 15th when you took that fix after you grounded? A. I think the weather was clear and the sea was smooth but I had better have a look at the Scrap Log.

Q. No. 567: Would it be 6:30 a.m.? A. Yes, it was North West wind force 2 at 4 o'clock in the morning.

Q. No. 568: Can you tell me whether there was any difference in the weather conditions between midnight May 14th/15th and whether the weather conditions then were different from the weather conditions when you took the celestial observation at 6.30 a.m. on the 15th? A. At midnight it was North West force 4.

Q. No. 569: What was the visibility? A. The visibility was good.

Q. No. 570: You were in bed at that time at 12 o'clock (53) midnight? A. Yes.

Q. No. 571: And you do not know whether it was possible to take a sight at that hour do you? A. No because although the visibility was good there were no stars because of the overcast.

Q. No. 572: You were on the bridge at that time? A. No.

Q. No. 573: Captain, I see that in your Log Book if you look at it for the 14th I believe you know do you not the Noon position giving the latitude and longitude? A. Yes.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 574: Now you took a sun sight earlier at 8 o'clock that morning. Is that correct? A. Yes, this No. 2.

Q. No. 575: Did you not indicate that in the Log Book? A. No we do not enter that in the Log Book.

Q. No. 576: Do you not enter into the Log the position you ascertain through dead reckoning? A. Yes, but not the morning position—the estimated Noon position. The morning position must be in that book.

Mr. Baillie: The calculation book?

A. Yes, on the 14th we put first the date and then the month. The estimated position at 8 o'clock Ship's time was Lat. 3° 12′ N. Long. 75° 29′ E.

Q. No. 577: Captain, after you grounded did you notice anything with respect to the tide? A. Of course I did.

Q. No. 578: What did you notice? A. I noticed that the height of the tide was at least 2 meters.

Q. No. 579: I do not mean that I mean direction and force. A. Of course I did. I picked up a lot of experience by staying 27 days at that place so I noticed that the tides were not normal.

Q. No. 580: In your opinion what bearing, if any, did that have upon your grounding? A. By noticing this I still have the opinion that the currents were unsettled there.

Q. No. 581: Captain, this vessel that was on your starboard side. When did you first see it? A. I saw her at night time before I went to bed. I saw a Ship coming towards the same direction and as I explained to Mr. (54) Waesche before I noticed that. I cannot swear how much she was coming to port of my course but I figured that she was coming at least 5° to port of my course.

Q. No. 582: A converging course? A. Yes, a converging course.

Q. No. 583: Knowing that you were headed for a chan-

nel between two Atolls did it comfort you that you found another vessel? A. Yes, of course, I felt sure that I had somebody else taking my course.

Q. No. 584: And you relied upon that as reassuring you that you were on the right course? A. Yes.

Q. No. 585: Captain, I have already asked you this but just to refresh my recollection I think you said that you set your course with the object of passing 16 miles or thereabouts to the North of Suvadiva Atoll and the reason you did not set it for the centre of the 56 mile channel is that you thought you were being driven to the North? A. Yes, having in mind that the Ship was light. She was not fully loaded.

Q. No. 586: Again, somewhat repetitiously it is correct is it not Captain that at no time between leaving Colombo and your grounding did you take a star sight? A. Yes, that is correct.

Q. No. 587: And the only sights that you took of any celestial body were a Noon sight of the sun on the 13th, a morning sight of the sun on the 14th and a Noon sight of the sun on the 14th? Otherwise the position of the vessel during that period of time was determined by her estimated speed and the course set by those three observations? A. Yes, together with the three different sights that are on the book.

Q. No. 588: And those were the only factors that were used to determine your position? A. Yes because the other times it was overcast.

Q. No. 589: Captain is it true that the best time weather permitting to take star sights is just before sunrise and just after sunset? A. Yes.

Q. No. 590: Do you remember on the 13th May which was the day before you left Colombo on your voyage for Durban approximately what time you went to bed? (55) A. The first day?

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 591: Yes, the first day: A. Well very roughly between 11 and 11.30 at night.

Q. No. 592: Before you went to bed did you make any requests or instructions to the Chief Officer who would be on watch I believe on the 4 to 8 watch to call you if weather permitted the taking of sights during his watch? A. I do not remember that but I knew that it was rainy weather.

Q. No. 593: When you went to bed? A. Yes.

Q. No. 594: But my question is did you tell him that if the weather improved and it cleared up in the early morning whether you should be called? A. I do not remember.

Q. No. 595: Did you yourself take a sun sight on the morning of the 14th at 8 a.m.? A. Yes.

Mr. Blackiston: May we have the chart Epsilon Exhibit E.

Q. No. 596: Captain, in determining your dead reckoning position in the area of the item marked No. 1 on the chart what speed did you use in calculating that dead reckoning position? A. As far as I remember I was using about 15 knots.

Q. No. 597: Would you mark on there if we have not already done so the Noon position on the 14th? Is that item 2? A. No, that is the position at 8 a.m. on the 14th May, this is the Noon position of the 14th, this is the morning sight.

Q. No. 598: When you took your morning sight before you took the sight you made a calculation of the dead reckoning position first before, you could take a sight? A. Yes.

Q. No. 599: And what estimated speed did you use in calculating that dead reckoning position? A. As far as I remember I think I used 13½.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 600: Why did you use 13½? A. Because the wind was hindering the Ship's speed.

Q. No. 601: How did you determine that the reduction in speed was at the rate of 1½ knots? A. By experience.

Q. No. 602: And estimate? A. Estimate, yes.

Q. No. 603: Was there any change in the engine revolutions? A. No.

(56) Q. No. 604: And in determining the dead reckoning position at item 3 on this chart what estimated speed did you use? A. Is it not dead reckoning here.

Q. No. 605: Here, refer to your Noon position on the 14th, Captain. Before you took the Noon sight on the 14th which is marked as item 3 you had first to have a dead reckoning position for the Noon position did you not? A. Yes.

Q. No. 606: Well, in determining that dead reckoning position first before you took the Noon sight what estimated speed did you use? A. 12 knots.

Q. No. 607: Why did you reduce it from 13½ to 12 knots? A. Because the wind was stronger.

Q. No. 608: And that was an estimate? A. Yes.

* * * * * *

Q. No. 610: Captain, you may want to refer to your Log book to give you the Latitude and Longitude. Would you read off the latitude and longitude? A. 00°51′ N. 73°22′ E. Sorry, Northern latitude.

Q. No. 611: Northern latitude? A. Yes.

Q. No. 612: What is the latitude of the northernmost tip of Suvadiva Atoll? (57) A. 00°55′.

Q. No. 613: And therefore the northernmost tip of Suvadive Atoll is 4 miles north of the point where you ran aground is it correct? A. About 3½ to 4 miles.

Q. No. 614: 3½ to 4 miles? A. Yes.

Q. No. 615: Perhaps we should mark that point on this 'A' with an arrow towards the point. Captain after

the vessel had grounded did you then make a calculation of the average speed from the last position of the vessel? A. Yes.

Q. No. 616: And do you remember what that was by referring to the Log Book? A. I do not remember exactly but I remember it was less than 12 knots.

Q. No. 617: Refer to the Log Book please. A. 11.23 knots.

Q. No. 618: Representing the average speed since when? A. Since the Noon position of the 14th until the position of grounding.

Q. No. 619: Captain before you went to bed on the night of the 14th you issued orders to the officer on watch that the course should be changed at 11:45 p.m. from 233° to 247°. Is that correct? A. Yes, true course.

Q. No. 620: If the course was not changed at 11:45 but was changed perhaps say 20 minutes later what effect would that have upon the course of the vessel? A. It was going to be further South.

Q. No. 621: If the course had been changed one hour earlier from 233° to 247°(T) what effect would that have on the course of the vessel? A. We would have escaped the grounding.

Q. No. 622: You refer to a Mr. Laister who came to see you. When was that? A. I must see the Log book. It must be after the 19th May.

Q. No. 623: Was it on board the Ship? A. No, we were with the Tug boat down south towards a small island. I forget the name.

Mr. Waesche: Ghan, Captain?

A. Yes, and we went and picked him up from there.

(58) Q. No. 624: Did he introduce himself to you? A. Yes, he did.

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 625: In what capacity? A. He said that he was the representative of the Salvage Association.

Q. No. 626: Did he say whether he represented the vessel Underwriters or Cargo Underwriters? At the beginning as far as I remember he said that he was Ship's Underwriters but later on I do not remember whether it was the same day or the second day or the third day he said that he was representing the Cargo.

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(59) * * * Cross-examination by Mr. Baillie.

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(62) * * * Q. No. 668: Did you not have a volume on the vessel called Ocean Vessels of the World? A. Yes, but I did not take it, I had not time.

Q. No. 669: Captain you had about a month aboard the Ship. A. That was my own book and I lost all my books and the reason why I lost all my books was because when I received instructions to abandon the Ship and I said in my Log Book it was 11 o'clock at night and I was in the tug boat and in an hour's time we sailed without going back to the Ship.

Q. No. 670: Did you not discuss that book with Mr. Laister? A. No that was my private book.

Q. No. 671: Did you use that in navigating to determine the route? (63) A. No as I was used to sailing directions I was sailing with a book giving ocean routes for all over the world.

Q. No. 672: But you did use it in determining what course you would follow from Lourenco Marques to Colombo? A. Yes.

Q. No. 673: Captain, you said you had a Greek Master's Licence Ocean Going. Is this a photostat copy of it? A. Yes.

Excerpts From Deposition of Efstratios Koutsoukos.

Mr. Baillie to Mr. Vanenzuela: May we have this marked Epsilon Exhibit CC—both pages.

Q. No. 674: How long have you had a Master's Licence, Captain? A. Since 1931.

Q. No. 675: Have you been sailing as a Master since 1931? A. Yes.

Q. No. 676: Except for the war years? A. Yes.

Q. No. 677: You were questioned about accidents and I think you explained the facts of the grounding off Denmark? A. Yes.

Q. No. 678: Now there was another grounding which we asked about off the Philippine Islands. Do you remember the facts of that grounding? A. Which one do you want first?

Q. No. 679: We had the previous facts but I am asking you to give the facts about the grounding off the Philippines? A. The grounding off the Philippines was due to hazy weather very early in the morning—fog.

Q. No. 680: Well now how did hazy weather cause the grounding. What were you navigating by? Were you in a channel or what? A. No, it was about 15 miles wide.

Q. No. 681: And you missed your route? A. Yes.

Q. No. 682: How long were you aground that time? A. 3 hours.

Q. No. 683: Did you work off by your own engine power? A. Yes.

Q. No. 684: Do you know what the nature of the bottom was—where you stranded? A. It was sand on the bottom and soft coral but mostly sand because I took soundings.

Q. No. 685: Did you have a Pilot aboard? A. No.

(64) Q. No. 686: Have you ever had a major collision, I mean with something other than this tug striking you, other than the grounding mentioned? Did you ever ground a ship during your career? A. Where?

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 687: I am asking you generally. Other than the two groundings which were mentioned by Mr. Waesche were there any other groundings anywhere? A. I do not remember any others.

Q. No. 688: You said I think that you went to Radar school and when was that? A. In 1958.

Q. No. 689: Who sent you there? A. S. G. Embiricos Ltd.

Q. No. 690: How long a course was it? A. About 15 days.

Q. No. 691: And who paid for it? A. S. G. Embiricos Ltd.

Q. No. 692: When you were leaving Colombo to proceed to Durban were you using the radar? A. Yes. I used the radar the first day.

Q. No. 693: That would be early morning of the 13th? A. Yes, after I cleared from the land it was not necessary to use the radar any more.

Q. No. 694: It was operating properly? A. Oh, yes, definitely.

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(65) * * * Further examination by Mr. Waesche:

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(66) * * * Q. No. 709: Captain, listen carefully to the next question. If you had information aboard the m.s. "NICOLAOS S. EMBIRICOS" at the time you departed Ceylon on May 13th contained in sailing directions recommending that vessels proceeding from Ceylon to South African ports during the month of May should proceed on a course which would take the vessel to the South of the Maldive Islands rather than through the one and half degree channel would you have followed the recommended course rather than proceeding through the one and half degree channel? A. The recommendation where from?

Excerpts From Deposition of Efstratios Koutsoukos.

Q. No. 710: Contained in sailing directions issued by the Hydrographic Office of the United States Government? A. No, they are not going to follow the same route which I knew.

Q. No. 711: Would you listen to the question please? A. No, I was going to follow the some route which I followed.

Q. No. 712: In other words, had the information been aboard the Ship you would have disregarded it? A. Yes.

No further questions.

* * * * * *

Excerpts From Deposition of Mr. Vasilios Hanides.

(67) * * * Mr. Vasilios Hanides, of Athens, Director, of lawful age, being by me first duly sworn, deposes and says:

Direct examination by Allan A. Baillie, Attorney for Compania Naviera Epsilon S.A. on Monday, 18th May 1970.

* * * * * *

Q. No. 1: Would you give us your full name? A. My full name is Vasilios (Basil) Hanides.

Q. No. 2: Your address is? A. Athensiadou Street 7.

Q. No. 3: Your present position? A. I am the Director of a Panamanian Company established in Greece. The name of the Company is Ionousian Maritime Elias S.A. Kolokotroni Street 78 Piraeus.

Q. No. 4: What does that Company do? A. It is a coordinating Company of Ionousian Shipowners' interest with 245 Ships, 4,500,000 deadweight tons.

Q. No. 5: Has Ionousian anything to do with Embiricos Company? A. Nothing at all.

Q. No. 6: Admiral I understand that you were with the Port Officer's Corps in Greece. Is that correct? A. Yes.

Q. No. 7: Will you tell us what your position was? A. The Port Officers' Corps is similar to the U.S. Coast Guard. I was the Commandant of the Port Officers Corps since the 13th April 1967 to the end of August, 1968. At the same time I was the Director General of the Ministry of Merchant Marine. The Admiral who holds the post of the Commandant of the Port Officers Corps is at the same time the Director General of the Ministry of Merchant Marine.

Q. No. 8: And how long were you with the Port Officers Corps? A. 38 years.

Q. No. 9: Before you entered the Port Officers Corps what was your study? A. Political science.

Q. No. 10: And where did you study Political Science? A. In Athens and then I got into the Port Officers Corps Academy and I was commissioned in 1933.

Excerpts From Deposition of Mr. Vasilios Hanides.

Q. No. 11: Do you have any Law School training? A. Yes, we take law studies.

(68) Q. No. 12: You say *we* take law studies. A. When we study Political Science and when we are as cadets in the Port Officers Corps Academy we take again.

Q. No. 13: To go back to the Port Officers Corps what are the Port Officers duties? A. Enforcement of maritime law and shipping policy.

Q. No. 14: And do you have anything to do with the manning of Greek vessels? A. All regulations concerning the manning of Greek ships are issued by the Ministry of Merchant Marine and Officers of the Port Officers Corps are enforcing all such regulations.

Q. No. 15: Does the Port Officers Corps have representatives elsewhere than in Greece? A. Yes. If I am not mistaken now they are in six foreign ports—in London, Rotterdam, Antwerp, Hamburg, New York, Tokyo.

Q. No. 16: Was the Rotterdam assignment in effect in the fall of 1968? A. Yes.

Q. No. 17: Admiral will you please tell us what the requirements of Greek maritime law are with respect to the number of qualifications of the Deck Officers of a vessel the size of the m.s. "NICOLAOS S. EMBIRICOS"?

> Mr. Waesche: I object to the form of the question.
>
> Mr. Baillie: What for?
>
> Mr. Waesche: Well you have not told the Admiral the size of the Ship.

Q. No. 18: A cargo ship with a deadweight of approximately 14,000 tons.

> Mr. Waesche: I object again to the form of the question. Under what Registry and what particular provision of the Greek law?

Excerpts From Deposition of Mr. Vasilios Hanides.

Q. No. 19: Admiral, the vessel is of Greek Registry. As I said approximately 14,000 tons deadweight. Tell us please what the manning requirements are? A. Well for ships of 14,000 tons deadweight the complement of Deck Officers includes the Chief Officer and two Second Mates besides the Master.

Q. No. 20: Now under what law is this provision? A. I do not remember exactly but it is a Royal Decree giving the complement of the crew of different sizes of ships.

Q. No. 21: Did you bring that book with you which you had the other day? (69) A. That book includes the law concerning complement of crew but there are special regulations in the form of Royal Decrees that gives the complement for the different size of Ships.

Q. No. 22: What is law 2651? A. Law 2651 says that no Ships should sail without having her crew in accordance with the Greek regulations and also it says when a Ship can sail without having a full complement of crew.

Q. No. 23: And what is law No. 841? A. Law No. 841?

Q. No. 24: I show you this document and ask if you can tell me what this is Admiral? A. This is the instrument of approval approving the registration of the vessel named ex "CAMELL LAIRD" to be registered under the Greek flag under the name of m.s. "NICOLAOS S. EMBIRICOS".

Mr. Waesche: May I see it please?

Mr. Baillie to Mr. Vanenzuela: May we please have this marked Epsilon Exhibit I.

Q. No. 25: Admiral, what is this paper? A. This is the Government's Gazette.

Q. No. 26: And in the Government's Gazette what is published? A. Laws, decrees, regulations and decisions issued by the three Ministers according to Legislative

Excerpts From Deposition of Mr. Vasilios Hanides.

Decree 687 of 1963 like the one I mentioned before for the vessel "NICOLAOS S. EMBIRICOS". The joint decision is that instrument of approval.

Q. No. 27: You said three Ministers? A. Merchant Marine, Co-Ordination and Finance.

Q. No. 28: Do I understand from what you say that this is the publication by the Government of a decree relating to the particular vessel with which we are concerned here. A. The instrument of approval concerns the registration of stipulations concerning the m.s. "NICOLAOS S. EMBIRICOS" under the Greek flag.

Q. No. 29: Were you one of the Ministers at the time this was issued? A. I was the one who issued it. I was the head of the department issuing such instrument of approval.

Q. No. 30: What clause in this Decree has reference to the manning of the m.s. "NICOLAOS S. EMBIRICOS"? A. It is Clause No. 8 referring to how the complement of the crew can be set up.

Q. No. 31: Now can you interpret that for us. A. More or less. I should think that it would speak for itself.

(70) Q. No. 32: I would like to have a translation on record. A. For all the crew in general and independent of speciality it is allowed to use Greek seamen not holding legal qualifications or foreigners in cases where—

Mr. Waesche: May I interrupt. Is this an exact translation that you are giving us now Admiral?

A. I think so.

Q. No. 33: You are not sure. A. Literally it is an exact translation but maybe it is not in the free eloquent English.

In cases where it is proved that it is difficult to find as soon as possible capable Greek seamen or in cases where Greek seamen are asking different terms as prescribed by

Greek law especially in connection with wages more especially for Engineers Officers and the lower grade of Engineers on account of the vessels engines Shipowners have the right during the three first years since the registration of the vessel to sign on within the organic complement of the crew on their own opinion and according to the circumstances Greek seamen not holding legal qualifications or foreigners an exception to Clause 2 stipulation of Legislative Decree 2651 1953 concerning complement of crew of Greek vessels and the relative Royal Decree dated 14th April 1954 or any other contrary stipulation so far as concerns the crew and there is something else which concerns Greek Seamen's Pension Fund.

* * * * * *

(71) * * * Q. No. 39: Admiral, I show you this document and ask you if you can tell me what it is? A. It is a photo copy of the Articles of m.s. "NICOLAOS S. EMBIRICOS" issued in Rotterdam on 9th October 1968.

Q. No. 40: Are you familiar with the certification of a document by Greek officials? A. Yes.

Q. No. 41: Is that the form of certification? A. Yes, I have issued many a one.

Mr. Baillie to Mr. Vanenzuela: May we have this document marked as Epsilon Exhibit J.

Q. No. 42: Do you recognise the signature which appears on the lower left hand corner of the first page? A. Well I can read it. It seems it says this is the Officer's signature, the Officer who issued the Articles in Rotterdam. He is at the time Senior Commander, George Kypriotis, attached to the Greek Consulate in Rotterdam.

Q. No. 43: Do you know that gentleman? A. I know him personally, he used to be my assistant when I was attached to the Embassy in London in 1961.

Excerpts From Deposition of Mr. Vasilios Hanides.

Mr. Baillie: Until Mr. Astras comes back with the law I should like to take a break.

Mr. Baillie: Sorry for the interruption.

Q. No. 44: Admiral, we earlier referred to the law No. 2651. I show you this document and ask you whether that refreshes your recollection. A. It is the Legislative Decree 2651 of 1953 concerning complement of crew of Greek vessels. I remember that I had (72) something to do with this law when it was drafted.

Q. No. 45: You had something to do with that law too and does this have something to do with the manning of Greek vessels and does this law have certain exceptions? A. Yes, it does. Every Greek ship has to have her crew according to the regulations I see here and you have the full complement of the crew.

Mr. Waesche: Objection. It does not seem to me that the witness is replying to the question.

Mr. Baillie: I do not agree. It is alright.

A. You have here according to the regulations the whole crew of the vessel of m.s. "NICOLAOS S. EMBIRICOS".

Q. No. 46: How do you determine that? A. You see the Authority that issued the Articles has to write in this page of the Articles the seamen that set up the crew of the vessel according to the regulations, the size of the vessel, the tonnage and the number and horse power of the engines.

Mr. Blackiston:

Q. No. 47: Admiral, what document are you referring to when you answer the question presented by Mr. Baillie? A. This is the Articles of the vessel.

Excerpts From Deposition of Mr. Vasilios Hanides.

Q. No. 48: As of what date Admiral? A. 9th October 1968.

Q. No. 49: This has already been marked Epsilon Exhibit J and you are referring to the second sheet of Epsilon Exhibit J according to the law which is Legislative Decree 2651.

Mr. Waesche: Objection.

A. According to Legislative Decree 2651 every vessel has to have a crew according to regulations and the crew is here on the second page. Now the authority may allow the signing on on a Greek vessel of seamen not holding the legal requirements, I mean the corresponding tickets for the post they are going to sign on for in certain cases and these cases are according to the law if they are not available in the Port where the vessel lies having corresponding tickets, and when they are not available in the next Port to the Port where the vessel lies wherever you can bring seamen to sign them on without delay to the vessel. Also when they are available but they are not offered to sign on.

Q. No. 50: Admiral to what were you referring when you just gave that particular statement? (73) A. To the law 2651.

• • • • • •

A. According to Article 2 of Legislative Decree 2651 the Ministry of Merchant Marine issues the regulations prescribing for each vessel. I mean according to the size of the vessel the tonnage of the vessel and the number of the engine horse power the complement of the crew because the law gives just the general provisions so according to this law the Ministry of Merchant Marine issued the vessel's regulations.

Q. No. 54: Admiral now you can refer to Epsilon Exhibit K. A. According to Epsilon Exhibit K the authority responsible to sign on crews has a right to sign on seamen

who are not holding the respective tickets in the cases I mentioned before (74) and I repeat when they are not available in the Port where the Ship lies or the nearest Port wherever you can bring seamen to sign them on the vessel but without delay to the vessel. The second case is when they are available but are not offered.

Q. No. 55: What do you mean by offered? Do you mean the man himself. A. Yes. The third case is when they are available they are offered but on terms above those prescribed by law and the collective Agreement enforced at the time the seaman is signed on and the fourth case is when they are available and offered but on account of their known conduct they will be a burden to the vessel so the authority is not signing such a seaman and may allow any seaman without holding the equivalent respective ticket for the post he signed on.

Q. No. 56: What Admiral are the sources of information available to the Port Officers Corps? A. In Greece we have the Seamens Labour office and abroad those available have to report to the Consulate to the Officer in charge for the Merchant Marine that they are available to sign on.

Q. No. 57: I show you this photostat copy of a document and ask you if you can tell me what this is. Attached thereto are English translations. I am just merely asking you about the Greek. Can you tell me what those are? Would you read the Greek please, Admiral, not the English. A. That is a photo copy of the Seaman's book of Paraskevas Alexopoullos and here it says that he got his sailor's ticket in 1951 and his Skipper's ticket first class in 1957.

Q. No. 58: What is the Skipper's first class ticket? A. It is a sailor's ticket. Skipper's second class, Skipper's first class, Second Mate, Chief Officer, Master. In other words a Skipper First class is a step below Second Mate.

Excerpts From Deposition of Mr. Vasilios Hanides.

Then I see here photo copies of some pages of the seaman's book.

Q. No. 59: Do you refer to the one on the right hand side? A. Yes on the right hand side. He signed on as Second Mate in Rotterdam on the 9th October 1968 on board the m.s. "NICOLAOS S. EMBIRICOS".

Mr. Waesche:

Q. No. 60: What was the date? A. 9th October 1968.

(75) Q. No. 61: Does any Officer certify this? A. Yes and he was included in the Articles issued in Rotterdam No. 78 1968 signed by the Port Officer in charge with Merchant Marine duties attached to the Consulate in Rotterdam.

Q. No. 62: Who was that? A. I think it is the same Senior Commander, Gerge Kypriotis.

Q. No. 63: And the last page what is that? A. Discharge of 11th June 1969 after the vessel ran aground.

Q. No. 64: These seamen's books by whom were they kept. A. These are personal things issued by the complement department of the Ministry of Merchant Marine and in these books no one else has the right to write in them because they are only for the authority to write when the seaman signs on and when he is discharged.

> Mr. Baillie to Mr. Vanenzuela: Subject of course to your comparison Mr. Waesche with the original seaman's book when and if we can get Mr. Alexopoullos to testify may I have this marked Epsilon Exhibit L.
>
> Mr. Waesche: Yes.

Q. No. 65: Any further comment you want us to make on this book, Admiral? A. I said that these Articles were issued because the previous Articles were renewed in Rotterdam and the man that holds this seaman's book was on the vessel on the previous Articles of the vessel.

Q. No. 66: Yes we know that.

Mr. Waesche: No we did not know it.

Mr. Baillie: I gave you a copy of the Statements, Mr. Waesche, that were taken of the crew of the m.s. "NICOLAOS S. EMBIRICOS" and it appears very clearly in the Statement of Mr. Alexopoullos that he was signed on in Ravenna in April 1968.

Q. No. 67: Admiral, on what you have before you—the law, and your knowledge of the law, your experience, and the certified copy of the Articles and the photostat copy of the Seaman's book can you have any opinion as to whether this man was properly signed on in accordance with the law?

Mr. Waesche: I object to the form of the question.

Mr. Baillie: I press the question.

Q. No. 68: I ask you have you an opinion as to whether or not this gentleman, Mr. Alexopoullos with a Skipper's licence first class was properly signed on? A. Knowing that if there were no other Second Mates available then the Port Officer could sign on this man holding this (76) Skipper's ticket first class.

Q. No. 69: It depends upon the availability or the other exceptions? A. Yes, the other exceptions I mentioned.

Mr. Blackiston:

Q. No. 70: Who determines the availability, Admiral? A. The Port Officer who is in charge of Merchant Marine because he has a list of the men available abroad. I mean here in Greece you have the Seamens Labour Office.

Q. No. 71: Admiral, were you familiar with the labour supply of Greek merchant vessels at the time in question? What was the situation at that time? A. October 1968—very difficult.

Excerpts From Deposition of Mr. Vasilios Hanides.

Q. No. 72: What do you mean by very difficult? A. They were not offered and especially with wages provided by the Agreement.

Mr. Waesche: I am going to check with the best evidence available on the information regarding the availability of licensed Officers in October 1968.

Q. No. 73: Admiral, maybe we should ask this and I certainly intend to fill in the blank with further testimony. In your experience Admiral what was the general availability of Second Officers who signed on Greek vessels in the year 1968 particularly with reference to the fall of 1968? A. I would say that since 1966-67 there were not in sufficient numbers available Second Mates. Though every year there are around 1500 new Second Mates they are not available to complete all the posts of Second Mates on Greek vessels and vessels under foreign flags of Greek interests.

Q. No. 74: Have you the general knowledge to give an opinion as to the availability of such Officers in foreign ports? A. It is much more difficult to get them in foreign ports than in Greece.

Q. No. 75: Admiral, suppose a crew is refused at a foreign port. How are the replacements obtained?

Mr. Waesche: I object to the form of the question again.

A. They have to ask the representative of the vessel in Greece to send the men that they need to sign on to replace those who are discharged in a foreign port.

Q. No 76: Does the Government have any control over the hiring of Officers? A. Yes, all seamen that are offered to sign on Greek vessels in Greek ports or in foreign ports for them to pass through the Seamens Labour Office.

Excerpts From Deposition of Mr. Vasilios Hanides.

(77) Q. No. 77: Admiral, are there any regulations of the Greek Government, Greek Maritime authorities, with respect to the composition of watches aboard a Greek flag vessel? A. If I remember well the watch would be one deck officer and two sailors when the vessel is not provided with automatic pilot but when a vessel is provided with automatic pilot then you have one officer and one sailor.

Q. No. 78: Sailor's duties as what? A. As lookout man. When you have two sailors, one is lookout and the other one is helmsman.

Cross-examination by Mr. Waesche:

(78) * * * Q. No. 89: In any event Admiral, if a foreign corporation desires to register its vessel under the Greek flag pursuant to Article 13 Legislative Decree 2687 of 1953 does the Owner then obtain certain taxation advantages? A. Taxation advantages, well.

Q. No. 90: Yes or no, Admiral. A. Yes, according to the instrument of approval you have certain conditions of the law concerning taxation of vessels which is in force for all Greek vessels under the Greek flag.

Q. No. 91: An Owner who registers pursuant to Article 13 does enjoy certain tax advantages does he not? A. No all Greek vessels are treated the same way.

Q. No. 92: Regardless of whether it is under Article 13 or not. You are sure of that? A. Yes, very sure.

Q. No. 93: Since when Admiral? A. Since 1956. Yes it was law 1880 of 1953 and the first instruments of approval that were issued. They give an exemption of tax instead of two years they give an exemption of five years but after that the Greek law prescribes the same treatment for all vessels.

Q. No. 94: If an Owner registers pursuant to Article 13 does he enjoy certain benefits with regard to manning requirements? A. Yes.

Q. No. 95: Was the purpose of Article 13 Legislative Decree 2687 of 1953 to induce foreign capital into Greece. A. Yes.

Excerpts From Deposition of Mr. Vasilios Hanides.

Q. No. 96: Now under Article 13 is it correct that if the employment of capable Officers or crew members cannot be obtained then the Owner may sign on a Greek citizen who would otherwise not be properly licensed or a citizen of a foreign country who would be properly licensed. (79) A. Article 13 does not provide anything like that. Other regulations provide for seamen you have signed on and under what conditions.

Q. No. 97: Are there regulations which were propagated pursuant to Article 13 which provide that if an Owner who has registered his vessel pursuant to Article 13 cannot obtain capable Officers or crew members he may then sign on a Greek citizen who would otherwise not have a proper licence or a foreign licence. Yes or no? A. I cannot even answer yes or no because I have to make some kind of suggestion. First of all such regulation is not issued with regard to Article 13 of Legislative Decree 2687 and secondly, I would say that yes according to Clause 8 of the Instrument of approval.

Q. No. 98: The instrument of approval being Epsilon Exhibit I? A. Yes. The Shipowner is allowed to sign Greeks or foreigners. It does not say foreigners should have the respective ticket.

Q. No. 99: Now again, are there regulations under Article 13 which provide that if an Owner who has registered his Ship pursuant to Article 13 has signed on board a man who does not have a proper licence must substitute that crew member for one who does have a proper licence at the first available opportunity? A. The available opportunity depends on the provisions stated by the law. When they are available they are offered.

Q. No. 100: Does Article 13 or any regulations propagated pursuant to Article 13 provide that if a Shipowner whose vessel is registered pursuant to Article 13 takes on board a man who is not properly licensed he

should be substituted when the vessel calls at a Greek port? A. When the vessel calls at a Greek port yes but always if they are available and all the cases I mentioned.

Q. No. 101: And did the decrees pursuant to Article 13 also provide that such unlicensed personnel must be substituted after 4 months if the vessel calls at Mediterranean Ports including Suez and Casablanca, Black Sea, Western European ports including ports in the United Kingdom or Ireland? A. It seems that you refer to another instrument of approval. This instrument of approval does not include such clauses and this one does not define things like that.

Q. No. 102: Is there any provision of the Greek Code which provides what I have said? (80) A. Even if there is a Greek Code saying things like that this is an instrument of approval above the written Maritime Code.

Q. No. 103: In accordance with your information is that right? A. Yes, because I was responsible for all these things and for all these laws which were issued by the Greek Government.

Q. No. 104: Admiral is it also not correct that pursuant to Article 13 or any decrees propagated in accordance with or based upon Article 13 that if an individual who is not properly licensed has signed aboard a Greek flag vessel he must be substituted after the elapse of 12 months irrespective of the port of call? A. In the instrument of approval Epsilon Exhibit I there is no such provision.

Q. No. 105: Regardless of that does not the Greek Maritime Code or any provisions of the Greek regulations or decrees so provide? A. Yes.

Q. No. 106: Yes, Admiral? A. No I cannot answer like that, I have to make some clarification.

Q. No. 107: Go ahead. A. Even if there is such a provision of the Greek Maritime Code this provision does not apply if the instrument of approval shows differently and

again if you have not such instrument of approval and you have the Maritime law again after the lapse of 12 months you can sign on seamen if they are not available and not offered and so on and so forth.

Q. No. 108: Admiral, I do not believe that is an answer to my question. My question was is there any provision in the Greek Maritime Code either by legislature or by decree which provides that if a vessel registered under Article 13 takes on board a man who is not properly licensed that after the elapse of 12 months such a man must be replaced irrespective of the port of call? A. Yes.

Q. No. 109: Yes, Admiral? A. Yes, I did not finish. You put me a question. I have to answer it and I have to answer it fully not as far as you like it—so there is a Greek law that says at a certain time not qualified seamen should be replaced and this definition of the law applies when there is no instrument of approval saying differently and again if there is no such instrument of approval to amend the law that says that within such a limit you have to replace the unqualified seamen you have to replace them if you have had opportunity to do so if they are available, if they are offered and so on and so forth. That is my full answer (81) to your full question.

Q. No. 110: Thank you, Admiral. Did Mr. Alexopoullos have sufficient licence according to Greek law to serve as a Second Mate on board a Ship such as the m.s. "NICOLAOS S. EMBIRICOS" except for the provisions of Article 13? A. When there are not available seamen.

Q. No. 111: Admiral, please listen to the question. I think it was quite clear and give me a yes or no answer. A. I cannot even answer yes or no. Your question was clear so my answer should be clear. You let me answer my way. Mr. Vanenzuela may I ask you something. The two gentlemen ask what they want to be put in the records, sometimes I want to have something put in the records.

Excerpts From Deposition of Mr. Vasilios Hanides.

Mr. Baillie: That is up to me to follow Admiral.

Q. No. 112: Can you answer a question such as that under Article 13? Is that sufficient or must you take into consideration other laws? A. I will give my answer. According to the Greek law when there are no available Second Mates holding equivalent respective tickets. Yes, Mr. Alexopoullos holding a Skipper's ticket first class can be signed on by the competent authority.

Q. No. 113: That is not an answer to my question, Admiral. A. That in my opinion is my answer to your question.

Q. No. 114: If the m.s. "NICOLAOS S. EMBIRICOS" was not registered pursuant to Article 13 then could Alexopoullos have served on board the Ship as a Second Mate? A. Yes, he could. I repeat, yes, he could.

Q. No. 115: Admiral, what are the requirements according to Greek law for the Officers serving on board a Ship which has a deadweight tonnage of the m.s. "NICHOLAOS S. EMBIRICOS"? A. I answered before—besides the Master, the Second Officer and two Second Mates.

Q. No. 116: Must one of the Officers have a Master's Licence? A. One of the Officers?

Q. No. 117: Yes. A. The Master.

Q. No. 118: We do not call him an Officer, we call him the Master. One of the individuals on board such a Ship must hold a Master's Licence? A. I do not think so. The regulations say that vessels of tonnage such and such must have a crew set up as follows:

A Master holding Master's certificate.

A Second Mate holding respective ticket.

(82) Q. No. 119: What ticket? A. A Second Mate and Chief Officer holding Chief Officer's ticket and two Second Mates holding Second Mate's Certificates.

Q. No. 120: Did Alexopoullos hold a Second Mate's Certificate? A. No.

Excerpts From Deposition of Mr. Vasilios Hanides.

Q. No. 121: No? A. I will give my full answer.

Q. No. 122: Alright. What are the requirements under Greek law for a man before he obtains a Second Mate's Licence? A. If he comes from seaman he has to have 4 years sea service and he must hold High School certificate.

Q. No. 123: What else? A. If he comes from Deck Officers Academy he has to have his diploma in Academy and two years' service.

Q. No. 124: Is it necessary to take an examination before one obtains a Second Mate's Licence? A. Yes for all tickets you have to pass an examination.

Q. No. 125: Since 1967 does the examination for a Second Mate's licence contain questions regarding radar navigation? A. Yes, they have to hold a ticket that they have passed the examination in radar.

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Q. No. 131: Does the examination which Mr. Alexopoullos took to obtain the licence which he had contain questions regarding radar navigation? A. I do not think so.

No further questions.

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Excerpts From Deposition of Mr. George Kypriotes.

(97) * * * George Kypriotes, of Athens, of lawful age, being by me first duly sworn, deposes and says:

Direct examination by Allan A. Baillie, Attorney for Compania Naviera Epsilon S.A. on Wednesday, 20th May, 1970.

* * * * * *

Question No. 1: Will you please state your full name and your resident address? A. My full name is George Kypriotes and my address is 17 Parthenonos Street, Athens.

Q. No. 2: If you would care to have the questions put through Mr. Gabrielidis, the Interpreter, you may do so. A. Yes, if I need help.

Q. No. 3: You have an official position with the Greek Government? A. Yes.

Q. No. 4: What is that position? A. From now?

Q. No. 5: Now. A. I am in the Ministry of Mercantile Marine, Captain Port Officer's Corps.

Q. No. 6: In October 1968 what position did you have, Captain? A. I was the Consular Port Captain in the Port of Rotterdam.

Q. No. 7: And under your supervision does there come the signing on of crews on Greek flag vessels? A. Yes.

Q. No. 8: I show you a photostat copy of what has been (98) previously identified as Article Epsilon Exhibit J and ask you whether your signature appears thereon? A. Yes, it is here. It is the new article of the Ship change in Rotterdam of m.s. "NICOLAOS S. EMIRICOS", cargo vessel.

Q. No. 9: Can you tell us briefly what your signature upon that document means with respect to the manning of the vessel?

Mr. Waesche: I object to the form of the question. Go ahead.

Excerpts From Deposition of Mr. George Kypriotes.

A. That the Articles is changing according to the Greek law.

Q. No. 10: I call your attention specifically to a Second Mate by the name of Alexopoullos. You find his name there? A. Just a moment. Yes.

Q. No. 11: Do we conclude from your signature on those Articles that you approved of his sailing as Second Officer of the vessel? A. That is right.

Q. No. 12: I show you a photostat copy of a document which purports to be a seaman's booklet which has previously ben marked Epsilon Exhibit L. Will you examine that? A. No, this is a photostat copy.

Q. No. 13: That is a photostat copy of the seaman's book? A. I am not sure whether it is a seaman's book or not.

Q. No. 14: It has been identified tentatively as the seaman's document and it purports to show that the seaman who carried that book was a Skipper first class. A. According to this paper and this Alexopoullos in the second page here where we put the special licence he was first a sailor and then in 1957 he took the rank of Skipper first class.

Q. No. 15: Did you say 1957?

Mr. Waesche: Skipper first class?

A. Yes this is 16th February 1957.

Q. No. 16: Before he was a sailor? A. That is right.

Q. No. 17: Can you give us some idea of the availability of Second Officers in Rotterdam or in Holland at the time that these Articles were opened? A. What do you mean by that?

Q. No. 18: What are the requirements in approving of the signing on of a Skipper first class as a Second Mate on a Greek flag vessel? What were they in October 1968?

Excerpts From Deposition of Mr. George Kypriotes.

Mr. Waesche: Excuse me he signed on.

Mr. Baillie: No he signs on again every time he changes Articles.

(99) A. I would like to know better the meaning of this question.

Q. No. 19: I would like to find out how it is possible for you as an Officer of the Port Officers' Corps to approve the signing on of a man who has a Skipper first class licence as a Second Officer of a vessel? A. At the time 1967-68 in the Greek Mercantile Marine we had a very big problem of Second Officers so we had a law. I give the law here—law No. 2651 of 1953—which says that the Port Officers in Greece and also in the other countries firstly they are obliged to check about the crews if they are properly qualified but because of the time 1968 we had not so many Second Officers so with the same law they gave us the responsibility to put in the rank of Second Officer another man who had the qualifications many years' service at sea or a licence below the licence we need now. If we need the licence of Second Officer the man we found who has a licence of rank below. For Skipper first class then he gave us permission to put such a man in the rank as Second Officer.

Q. No. 20: Captain, what sources of information did you have available in Rotterdam in October 1968 to determine whether or not Second Officers could be found to fill the position. How far did your jurisdiction extend in that time? A. In all of Holland. The law says that if we do not find in the place in which we are the man with the certificate we need then we can put another man according to the qualification he has. In Rotterdam I was as Port Captain there. All the crews and Officers firstly came to my office to sign in or to sign off so I knew not only for Rot-

terdam but also for other ports, Amsterdam, the available seamen and Officers in Holland.

Q. No. 21: Did you have access to information respecting surrounding countries such as Belgium and other countries? A. No I was only responsible for Holland.

Q. No. 22: Have you any recollection of the precise circumstances under which you approved the signing on of Mr. Alexopoullos? A. No, because we have many ships. I had about 60 ships per month in Rotterdam. I do not remember this particular case.

Q. No. 23: I see but nevertheless you affixed your signature to this request? A. Yes.

Q. No. 24: In your present capacity are you familiar with the decrees or regulations with respect to the constitution of the watches aboard cargo vessels? A. You mean in general.

(100) Q. No. 25: Yes, how many persons are required to stand watch under the Greek regulations on a Greek flag vessel? A. At what time?

Q. No. 26: Let us limit it to the period in May of 1969. A. I do not know in Rotterdam.

Q. No. 27: I am not talking about Rotterdam. How many people must stand watch on a Greek flag vessel in May 1969 on the bridge? A. For every kind of Ship?

Q. No. 28: For a cargo ship of about 14,000 tons deadweight, Greek flag. A. I am not sure, the only thing I know that I cannot be sure.

Q. No. 29: Cannot be sure? A. No. As far as I can remember by virtue of a convention dated 1968 only one man should be on watch.

Q. No. 30: When you say one man, one seaman? A. Yes.

Q. No. 31: When, under what conditions? A. As a watchman, lookout. I do not remember if it was 1968 or

Excerpts From Deposition of Mr. George Kypriotes.

1967. This is the question now but when I was in Rotterdam I remember such a special order was sent from the Minister for that case.

Q. No. 32: I show this document and ask you if you can tell me what that is? A. Yes.

Q. No. 33: What is it Captain? A. This is an explanation of this particular law 2651 and was sent from the Minister of Mercantile Marine to all the Port Officers.

Q. No. 34: And what does it have to do with? A. It explains in which cases we can sign on people without the right qualifications.

Q. No. 35: From what office did this circular originate? A. This is the special division of Marine labour.

Q. No. 36: By whom is it signed? A. It is signed by order of the Ministry by the General Director.

Q. No. 37: The Ministry of what? A. The Ministry of Mercantile Marine.

Mr. Baillie to Mr. Vanenzuela: May we have that marked as Epsilon Exhibit GG.

Q. No. 38: Captain I show you this document and ask you what (101) that is? A. This is for the automatic pilot.

Q. No. 39: The automatic pilot, what does that mean? A. I do not know if the Ship has the automatic pilot.

Q. No. 40: Let us assume that it does. What does that have reference to? A. This is exactly for the Ship which has automatic pilot and it shows the regulation of the working hours on board the merchant vessels and shows about the number of men who must be as a watch on Ships which are with automatic pilot.

Q. No. 41: What is the provision of that circular or whatever it is? A. The regulation which was in force prior to the issuance of this circular provided for the consistence of every watch by two seamen, one would be the

lookout man and the other would be a seaman on deck. Nevertheless following a survey conducted by the Ministry and following a British collective Agreement dated 1966 which Agreement was subsequently amended to provide for one lookout man and following discussions held within a safety sub-committee of IMCO the Ministry decided that the watch of a seaman on deck should in the future consist of one man only who would be used as a lookout man and who during the day would work as a deck man. If the conditions for the safety of navigation did not allow the use of the automatic pilot then the watch on the bridge would consist of two men one would be in the steering and the other would be a lookout man.

Q. No. 42: If the automatic pilot was changed to a common one? A. Common one?

Q. No. 43: Not automatic—hand steering. A. Then one of the seamen who would be on duty would be added to the watch.

May the record indicate the full designation of IMCO—Internavigational Maritime Consultative Organisation.

Q. No. 44: From whom did this circular come? A. It came from the Minister of Mercantile Marine who at that time was an Admiral Athananaseou—in January 1968. A copy of the circular was also addressed to the Pan-Hellenic Union of Seamen.

Mr. Baillie to Mr. Vanenzuela: May we please have this marked Epsilon Exhibit HH.

Q. No. 45: Captain I have a third document here I should like to show you. Would you tell me what that document is? (102) A. Yes, this is an explanatory circular because when the first circular was issued a number of questions arose among seamen and this circular explains what will be the duties of the lookout man when there is an automatic pilot.

Excerpts From Deposition of Mr. George Kypriotes.

Q. No. 46: Captain, the circular you refer to is that the one we have marked as Epsilon Exhibit HH? Was the circular you are referring to in answering my question with respect to the document I just handed to you, the circular that has been marked HH? A. This circular which was now handed to me is the consequence of Epsilon Exhibit HH and was issued following a document by the Pan-Hellenic Union of Seamen.

Q. No. 47: Was this also issued by the Ministry of Shipping in Greece? A. Yes, that is right.

Mr. Baillie to Mr. Vanenzuela: May we have that marked as Epsilon Exhibit II.

Q. No. 48: Captain was the circular or recommendation or whatever you call it which has been marked HH in effect in May 1969? A. As far as I know there has been no other circular to have amended this one.

Q. No. 49: And if there had been a change would this come under your observation in the Department? A. Any change is being notified to all the Officers of the Ministry and therefore all the Officers take knowledge of any changes.

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Cross-examination by Mr. Waesche:

Q. No. 51: May we have the Exhibit Ships Articles? Captain did Mr. Alexopoullos have a sufficient licence under (103) normal circumstances which would permit him to have been signed on the m.s. "NICOLAOS S. EMBIRICOS" as a Second Mate? A. What do you mean by under normal circumstances.

Q. No. 51: Well for instance if at the time he was signed on in Rotterdam there were in Rotterdam Greek seamen who had a Second Mate's licence could you have

then allowed him to have served as Second Mate aboard the ship? A. No.

Q. No. 52: Is it not a fact that the licence which Mr. Alexopoullos had at the time he signed on board the Ship in Rotterdam would qualify him to serve as Boatswain aboard a Ship such as the m.s. "NICOLAOS S. EMBIRICOS"? A. Since according to Greek law there were no Officers in Rotterdam available we were in compliance with the Greek law when we signed on Alexopoullos.

Q. No. 53: Captain, you are not answering my question. A. I do not finish yet. If there were Officers available Alexopoullos would not be given this position as Officer.

Q. No. 54: As a matter of fact the only position for the top position which he would have served if there were available Officers was that of Boatswain. Is that correct? A. Yes, according to his certificate he was a Boatswain.

Q. No. 55: Did you ever see Mr. Alexopoullos before you signed Epsilon Exhibit J—the Articles? A. The Articles are being drawn up in my presence and all seamen who are to be signed on appeared in my presence and also those who signed off.

Q. No. 56: Did you ever require that Mr. Alexopoullos have a physical examination before he signed on the Ship? A. No, since he was already serving on board the Ship.

Q. No. 57: Did you ever subject Mr. Alexopoullos to a written examination concerning his qualifications to stand a watch as Second Mate? A. No, since there is his previous service at sea as Second Mate.

Q. No. 58: What was his previous service at sea as Second Mate? A. From what appears from Epsilon Exhibit L Mr. Alexopoullos was signed on previously on this Ship as Second Mate.

Q. No. 59: For how many months had he served as Second Mate prior to your signing the Articles in Rotterdam? A. I must consult this seaman's booklet.

Excerpts From Deposition of Mr. George Kypriotes.

Q. No. 60: Certainly, Captain. Now after you have consulted his seaman's booklet will you please answer my question? (104) A. This is not the seaman's book. I cannot answer from that booklet.

Q. No. 61: Alright. When did you sign the Articles Captain? A. The date?

Q. No. 62: Yes. A. 9th October 1968.

Q. No 63: Did you personally make any enquiries whatsoever into the capabilities or qualifications of Mr. Alexopoullos before you signed the Articles? A. According to Greek laws we make no such enquiries for any seamen who is to be signed on we simply consult their respective seaman's booklets.

Q. No. 64: Before you signed the Articles in Rottedam did you communicate with the Ministry of Mercantile Marine in Athens? A. In my opinion there was no reason for me to communicate with the Ministry.

Q. No. 65: Then is the answer to my question that you did not communicate with the Ministry of Mercantile Marine? A. Yes.

Q. No. 66: Yes, you did not? A. Yes.

Q. No. 67: Sometimes the record becomes a bit confused so let me make it clear. You did not communicate? A. I did not communicate because as I explained in my opinion I should not communicate with the Ministry because the subject was in my entire responsibility. We have orders and authority from the Ministry to act in these circumstances under our own responsibility.

Q. No. 68: Then you personally do not know whether or not there were qualified Second Mates available in Greece who could have served aboard the m.s. "NICOLAOS S. EMBIRICOS" at the time that you signed the Articles. Is that so? A. I do not know if there were available Second Mates in Greece but I know that they were not available in Rotterdam.

Excerpts From Deposition of Mr. George Kypriotes.

Mr. Waesche: No further questions.

Further examination by Mr. Baillie.

Q. No. 69: Continuing the last question, Captain, you said there were no Second Mates in Rotterdam. Is that not true in all of Holland which was in your jurisdiction? A. Yes in the whole of Holland.

Mr. Baillie: No further questions.

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Excerpts From Deposition of Mr. Ioannis Boulmetis.

(84) * * * IOANNIS BOULMETIS, of Andres, Chief Officer, of lawful age, being by me first duly sworn, deposes and says:

Direct examination by Allan A. Baillie, Attorney for Compania Naviera Epsilon S.A. on Wednesday, 20th May, 1970.

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(85) * * * Q. No. 12: Did you serve in m.s. "NICOLAOS S. EMBIRICOS"? A. Yes.

Q. No. 13: And when did you join her? A. I joined her in Ravenna but I do not remember exactly the date. It was in 1968 but I do not remember exactly when.

Q. No. 14: Would the seaman's book refresh your recollection? A. Yes—it was on April 3rd 1968 in Ravenna.

Q. No. 15: Did you in order to obtain your Chief Officer's license have to have training in radar? A. Of course.

Q. No. 16: And, did you go to School? A. Yes.

Q. No. 17: Where did you go to school? A. In Piraeus in the public school.

Q. No. 18: A school run by the Government? A. Yes, it was a school run by the Government.

Q. No. 19: How long did you go to this school? A. 1 month.

Q. No. 20: Did you go to school every day? A. Of course.

(86) Q. No. 21: How many hours a day did you go to school? A. From 8 in the morning until 2 o'clock.

Q. No. 22: Did you go on Sundays? A. No.

Q. No. 23: Did you go on Saturdays? A. Yes.

Q. No. 24: Every other day of the week except Sunday? A. Yes.

Excerpts From Deposition of Mr. Ioannis Boulmetis.

Q. No. 25: What did you study at the radar school? A. Both theory and practice.

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Q. No. 29: What watches did you stand? A. 4 to 8.

Q. No. 30: Did you take any sights? A. No.

Q. No. 31: Did you plot the course at all? A. No this was up to the Master.

Q. No. 32: Did you have charge of any of the navigational equipment of the vessel and, if so, what? A. I had to do with the Course Recorder and the gyro compass.

Q. No. 33: Was the Course Recorder in operation during the passage from Colombo to the time you stranded on the Suvadiva Atoll? A. Of course it was.

Q. No. 34: Did you set it in motion? A. Yes, I did.

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(87) * * * Q. No. 48: Did you at any time try to synchronise the Ship's clocks with the Course Recorder? A. No, we have never done that.

Q. No. 49: You never did that? A. We had never this practice.

Q. No. 50: So that the time as shown on the Course Recorder record is a matter of chance then? A. Yes.

Q. No. 51: And did you ever use these records after they had been in use on the Recorder? A. For rough paper when the voyage was over.

Q. No. 52: And did you ever use it to check on the proficiency of the Helmsman or the proper operation of the automatic pilot? A. Every Officer during his watch would check the compass with the record of the Course

Excerpts From Deposition of Mr. Ioannis Boulmetis.

Recorder so that when we arrived at (88) our destination it would not be of any use to keep these records.

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Q. No. 58: You stood the 4 to 8 watch on the 13th and again on the 14th? A. Yes.

Q. No. 59: Were any course changes made during your watches? A. No.

Q. No. 60: On the 4 to 8 p.m. watch on the 14th did you notice any other vessels in your vicinity? A. One vessel.

Q. No. 61: You saw the vessel—where was she relative to your Ship? A. To our starboard side.

Q. No. 62: How far off? A. 1½ to 2 miles.

Q. No. 63: Did she continue to proceed on a course roughly parallel to yours? A. Yes, she did.

Q. No. 64: Was she still there when you went off watch? A. Of course.

(89) Q. No. 65: What course orders did you pass to the Second Mate when you left the bridge that evening? A. Nothing.

Q. No. 66: Nothing—did you not pass a course to him? A. I passed on to him the course but nothing about a change of the course.

Q. No. 67: Who did, do you know? A. The Master.

Q. No. 68: Was the Master on the bridge during your watch? A. Yes, he was.

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(90) • • • Q. No. 87: Prior to serving as an acting Chief Mate with a Second Mate's license did you also serve as a Second Mate with a Second Mate's license? A. Of course, on board the "GEORGES EMIBIRICOS".

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Excerpts From Deposition of Mr. Ioannis Boulmetis.

Direct Examination by Mr. Blackiston:

(91) * * * Q. No. 97: Do you recall the weather conditions that morning before dawn on the 4 a.m. to 8 a.m. watch May 14th? A. No, I do not remember.

Q. No. 98: Do you remember whether or not any stars were visible? A. I do not remember.

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Cross Examination by Mr. Waesche:

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(92) * * * Q. No. 112: Did you serve as Chief Officer with a Second Officer's License for 23 months during the years 1965 and 1967? A. Yes.

Q. No. 113: What ships did you serve aboard during that particular period? A. On one vessel.

Q. No. 114: What was the name of the vessel. A. The "ANASTASIA".

Q. No. 115: Was the "ANASTASIA" operated by S.G. Embiricos Ltd.? A. It was operated by Embiricos but the Owner was not Embiricos. The Owner was Mr. Kydoniefs.

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(93) * * * Q. No. 130: Was the m.s. "NICOLAOS S. EMBIRICOS" equipped with an echo sounder? A. Yes.

Q. No. 131: When was the last time prior to the stranding that you personally ever used that equipment? A. I do not remember.

Q. No. 132: Did you ever use the equipment from the time that you signed aboard this Ship until the stranding? A. No, the Master would use it.

Q. No. 133: Do you know how to operate the Echo Sounder that was aboard the m.s. "NICHOLAOS S. EMBIRICOS"? A. Of course I do.

Excerpts From Deposition of Mr. Ioannis Boulmetis.

Q. No. 134: Were you instructed by the Master not to use the Echo Sounder without receiving an order from him? A. No. The chief officer whom I relieved had told me not to use the equipment except for the gyro compass and the Course Recorder.

Q. No. 135: Would you repeat that. A. The chief officer whom I relieved had told me not to use the equipment of the Ship with the exception of the gyro compass and the Course Recorder.

Q. No. 136: Why did he tell you that? A. This was the whimsicality of the Master.

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(94) * * * Q. No. 137: Did you ever see the Master of the Ship operate the Echo Sounder from the time that you boarded the vessel in Ravenna until she stranded? A. Yes.

Q. No. 138: Was the Ship equipped with a Radio Direction Finder? A. Yes.

Q. No. 139: Did you ever use the Radio Direction Finder from the time you boarded the vessel until she stranded? A. Yes.

Q. No. 140: When was the last time you used the Radio Direction Finder prior to the time the Ship went aground? A. I do not remember.

Q. No. 141: Do you remember what was the geographic situation of the Ship when you last used the Radio Direction Finder prior to the stranding? A. I do not remember.

Q. No. 142: Do you know how to obtain a radar plot? A. Yes, I know.

Q. No. 143: Do you know how to obtain the true course and true speed of a vessel after plotting the echoes of an approaching Ship? A. Yes.

Excerpts From Deposition of Mr. Ioannis Boulmetis.

Q. No. 144: How do you do it? A. You first take the plot and then with some sort of an instrument—I do not know exactly what it is called, it has small circles and it shows the distances.

Q. No. 145: Is this the type of instrument to which you were referring? A. Yes, you use these when the radar has a true motion.

Mr. Waesche had placed before the witness before he answered the question the maneuvering board marked Cargo Exhibit III.

Q. No. 146: And you use such a maneuvering board when the radar shows true motion. Is that correct? A. True motion, yes.

Q. No. 147: What would you use if the radar were using relative motion? A. Many use them, many don't. They simply look at the screen of the radar.

Q. No 148: From simply looking at the screen of the radar (95) can you obtain the true course and speed of the approaching vessel? A. No.

Q. No. 149: In order to obtain the true course and speed of the approaching vessel is it necessary to use a maneuvering board? A. Yes.

Q. No. 150: Were there any maneuvering boards aboard the m.s. "NICOLAOS S. EMBIRICOS"? A. Yes.

Q. No. 151: Even if I told you that the Captain testified yesterday that there were no maneuvering boards on board the Ship?

Mr. Baillie: I object to the form of the question. He said he did not use them himself. Take the question and we can correct it later.

Excerpts From Deposition of Mr. Ioannis Boulmetis.

A. I remember there were such maneuvering boards.

Q. No. 152: Did you ever use them when you were on board the m.s. "NICOLAOS S. EMBIRICOS"? A. I do not remember.

Q. No. 153: Was the m.s. "NICOLAOS S. EMBIRICOS" equipped with any book entitled Radio Aids to Navigation? A. I do not remember.

Q. No. 154: Did the Master order that the officers of the watch and the A.B. on duty should rely upon what they could see rather than resort to the radar screen? A. The Captain did not prohibit us to resort to the screen of the radar. The officers could resort to the screen of the radar.

Q. No. 155: That is not my question—Did the Master prefer that the officers of the watch and the A.B. on duty should rely upon what they could see rather than resort to the radar screen? A. Yes.

Q. No. 156: And is it a fact that on board the m.s. "NICOLAOS S. EMBIRICOS" radar was used only if approaching congested waters or if the vessel was proceeding in fog? A. When we were approaching the shore or ports we would use the radar.

Q. No. 157: At such times was the Master on the bridge? A. Yes.

Q. No. 158: Is it true then that normally if the Master was not on the bridge the radar would not be used? A. The radar was in operation and even if the Master were not (96) on the bridge if we were to see anything on the screen we would let the Master know.

Q. No. 159: That is not the answer to my question. The question was repeated. A. If there was any need we would use the radar. If there was no need we would not use the radar.

Excerpts From Deposition of Mr. Ioannis Boulmetis.

Q. No. 160: Chief, would you please answer my question. A. I do not understand your question.

The question was repeated. A. No, we had not the right to put the radar in operation ourselves. The Master himself would put the radar in operation then he would leave and we would look at the radar.

Mr. Waesche: Thank you, I have no further questions.

Further examination by Mr. Blackiston.

Q. No. 161: Chief you stood the 4-8 watches in the early morning and late afternoon? A. Yes.

Q. No. 162: And the best time to take a sight of stars is just before sunrise and just after sunset? A. Yes.

Q. No. 163: Now as best you can recall. After leaving Colombo during your watches in the early morning before sunrise was there any opportunity to take a star sight? A. I do not remember.

Further cross-examination by Mr. Waesche.

Q. No. 164: Who was the navigating officer aboard the Ship? A. The Master.

Q. No. 165: While you were aboard did you personally ever take any observations of celestial bodies? A. No.

Q. No. 166: The Master was the only one aboard the Ship who took celestial observations for navigation purposes? A. Yes. We could plot on the chart lighthouses when we were sailing near the shore.

No further questions.

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Excerpts From Deposition of Paraskevas Alexopoulos.

* * * * * *

(1) Deposition of Paraskevas Alexopoulos as a witness on April 6, 1972 at Rotterdam, The Netherlands, pursuant to stipulation of the parties.

* * * * * *

(3) Mr. Baillie: Mr. Alexpoulos, what is your full name, please.

Paraskevas Alexopoulos.

Where do you live.

Pyrgos, Tinou, Greece.

Do you earn your living as a seaman.

Yes, I do.

How long have you been going to sea for a living.

I began in 1947.

Have you had various positions on various vessels since 1947.

Yes.

Will you tell us please what positions you have served in.

As seaman. I started like a young boy on a ship, seaman, bosun, 2nd Officer.

Were you employed as 2nd Officer on a vessel called the M.S. NICOLOAS S. EMBIRICOS.

Yes, I did.

Do you recall when you joined this vessel.

(4) I do not remember exactly the date, but it was about April. I do not remember very well and the place was Ravenna. I joined the ship in Ravenna, I do not remember, there is a log book in the ship where you can find it.

Mr. Waesche: I will stipulate that the witness joined the M.S. NICOLAOS S. EMBIRICOS in the month of April in the year 1968 at the port of Ravenna.

Mr. Baillie: In what position did you serve on the NICOLAOS S. EMBIRICOS.

Excerpts From Deposition of Paraskevas Alexopoulos.

As 2nd Offier.

Had you served as a 2nd Officer on any other vessel before joining.

In two cases. It was a ship under Monrovian flag.

Mr. Waesche: What did the witness say. Did the witness say Monrovian flag.

Mr. Baillie: Mr. Alexopoulos would you repeat the last answer you gave to the interpreter.

The ship was called NICOLAOS, I served for 23 months.

I do not think this is quite responsible. Did you say Mr. Alexopoulos that the Monrovian flag was the equivalent of the Liberian flag.

On the back of the ship it is written Monrovia, but it is from Liberia; it is the same thing.

(5) Have you at any time prior to joining the NICOLAOS S. EMBIRICOS served as a chief mate.

On the ship I served for about one month till the other one came. Of course it was as a chief mate, so it means that I served as a chief mate. I do not know whether it was entered in the log book.

Were you serving as second mate on the NICOLAOS S. EMBIRICOS when that vessel stranded on Suvadive Atoll in May of 1969.

Yes.

After Nicolaos I served also as a second officer on the vessel Kriti, American Liberty under Greek flag.

I will repeat my question. In May of 1969 were you serving as a 2nd officer on the NICOLAOS S. EMBIRICOS.

Yes.

Did you in May of 1969 know how to operate a radar.

Sure.

Did you in May of 1969 know how to take starsights and sunsights with which to figure out your ship's position.

No.

It was cloudy weather, and I could not see a thing.

Excerpts From Deposition of Paraskevas Alexopoulos.

(6) Mr. Alexopolous, will you please listen to the question I ask, and if you do not understand it, say that you did not understand and I will repeat. The question was this: did you know in May 1969 how to take starsights and sunsights with which to figure out your ship's position.

Yes, of course I knew.

Did you know how in May 1969 to determine the (error) in the ship's gyrocompass by celestial observation.

Yes, of course.

Mr. Alexopoulos, I show you Epsilon Exhibit G and ask you whether or not you can identify that book for me.

This is an observation book.

From what ship.

From the NICOLAOS S. EMBIRICOS.

Did you make any entries in that book.

There are many signatures of mine in that book and I point them out.

(Witness points out signatures.)

* * * * * *

(11) * * * In May of 1969 what were your duties aboard the NICOLAOS S. EMBIRICOS.

I was 2nd Officer.

Did you stand watches.

Yes, from the time I joined the ship till I left I made the ship's watches from 12 till 4 o'clock in the afternoon and also from 12 to 4 in the morning.

Did you stand the watch from midnight to 04.00 hours on May 15, 1969.

Yes, surely.

Who had been standing the watch before you.

An Officer, G. Marinados.

When you relived Mr. Marinados did he give you any information with respect to the position of your vessel and the course.

Excerpts From Deposition of Paraskevas Alexopoulos.

Yes, he gave me the position that we were now on this spot and we have taken this course.

* * * * * *

(14)* * * Who, if any one, was standing the midnight 4 o'clock watch on May 15, 1969 with you.

Yes, there was also a seaman who was with me. His name was N. Glymenakis.

Now, where did you two, Glymenakis and yourself, stand your watch up until the time of the stranding. Where on the ship, where were you physically on the ship during your watch.

On the leftside outside of the bridge.

Is that the wing of the bridge.

The wheel-cover of the bridge, outside the wheel-house (witness answered in English.)

Where during the time between the time you came on watch and the stranding did Glymenakis stand his watch.

Glymenakis was standing next to me.

Did you have a helsman or wheelman.

The ship was on the automatic pilot.

Can you tell us when, what time the vessel took the strand.

It was 1:22; it should be 1:22.

(15) Between the time you came on watch and 1.22 what were the weather conditions.

The weather was blowing towards the head of the ship, the bow of the ship about 4 Beaufort, but it was a little bit rough, moderate.

How was it over head. Were there any stars out.

Visibility was moderate and the sky was cloudy.

* * * * * *

Mr. Baillie: * * * Do you know Mr. Alexopoulos who laid out the course lines in pencil on the chart Epsilon Exhibit E.

Excerpts From Deposition of Paraskevas Alexopoulos.

(16) It was the Captain who did it. Of course.

In other words these are all lines of the Captain. How long have you been sailing with Captain Koutsoukos.

From the day I joined the ship till the day I left the ship it was this Captain.

Will you tell us what you think of his abilities as a navigator up to that point.

Mr. Waesche: Note my objections.

Mr. Alexopoulos: I am younger than the captain and I cannot check, control the captain.

(Mr. Waesche asking the interpreter: What did he say). I cannot express my opinion. The only thing I know is that he is a captain for about forty years, because he was 65 years old.

* * * * * *

(18) * * * Now, you say the vessel took the strand about 1.22 a.m. May 15, what caused you to think that the vessel was aground at that time.

I realised it from the shock I felt. A couple of times as if it was jumped, I felt sometimes as if the boat was jumped for a couple of times at the same moment.

* * * * * *

(19) * * * Had you seen before you felt this motion of the ship any land or any breakers before that.

No.

After you . . . Did the vessel come to a stop.

When I felt this jerking movement I rushed immediately to the side of the boat but I saw nothing.

Did the vessel come finally to a complete stop.

The vessel came to standstill.

Now, at that point when she came to a standstill, did you see anything that indicated just where your vessel was.

I saw nothing.

* * * * * *

Excerpts From Deposition of Paraskevas Alexopoulos.

(20) * * * When daylight came on the 15th were you still on the bridge.

When she stranded I woke up the Captain, called the Captain, I rung the alarm and at the same moment a lot of the crew, the Captain and a lot of the crew came around me, were found around me on the bridge and the Captain asked me what happened. I told him I had no idea. The Captain asked me: where have we stranded. I told him I had no idea.

Mr. Waesche: Is that all he said.

The Captain asked me where have we stranded. I did not know I replied to him. I did not know because according to my chart I was outside the channel.

Mr. Baillie: Will you explain to us what you mean by outside the channel.

I meant that I had passed through the channel.

(22) * * * Mr. Baillie: Mr. Alexopoulos before your ship went aground did you consider turning on the fathometer.

No, because the sea was very deep, it was not necessary.

And how about the radar.

No.

After the stranding while you were still with the ship did an English gentleman come aboard the ship.

Yes, an Englishman and some Dutch people.

Did you remember whether his name was Laister.

Mr. Waesche: Can we stipulate the spelling.

Mr. Baillie: We have stipulated that the spelling of the name of the man to whom I have referenced is Laister. Do you not have an independent recollection. Do you remember him.

Yes, I do remember.

You do remember.

Did you observe what he did with respect to the navigation equipment of the vessel such as the radar, the fathometer, direction finder.

Excerpts From Deposition of Paraskevas Alexopoulos.

(23) First he checked the radar, the gyro compass and the magnetic compass. I do not remember whether he checked the fathometer. I think he looked into them.

To come back to the radar. You did know that he checked that. Did you see whether or not the radar was on when he checked it.

Yes, it was functioning.

That is all.

Mr. Blackiston: How many years altogether did you serve in the Embiricos Group.

From 1944. I left for a short period, about 1 year, and I returned again.

And have served continuously since that time with the Embiricos Group.

Yes, I continued.

Prior to joining the NICOLAOS S. EMBIRICOS at Ravenna in April, 1968 how long have you served on other vessels as 2nd Mate.

I worked on board the . . .

No, just how many years altogether.

About 4/4½ years I worked as 2nd Mate.

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(26) • • • Mr. Waesche: What is the extent of your formal education.

First class Coast Master.

I repeat the question: what is the extent of your formal education.

Somewhere here there is a certificate.

Mr. Baillie: He is asking you how long you went to school, not navigation school, but school.

(27) I have finished primary school.

Mr. Waesche: How many grades.

There are six classes primary school.

Excerpts From Deposition of Paraskevas Alexopoulos.

Have you taken any courses in radar navigation.

I have followed a course of radar, but I have not got the certificate, because there are two together, you have to follow also the course of D.F. and the other I did not need the other course, and that is why I have not got the certificate.

Did you take any courses in radar.

Yes, I followed the public school of radar in Greece. It is only 15 days.

It is only 15 days this course.

What licenses do you hold issued by the Greek government.

What kind of licenses do you mean in general.

Do you hold a mate's license.

It must be somewhere here the certificate of the second mate. It is not a certificate or license of second mate, but first coast master.

Is that the equivalent of a mate's license.

Not exactly but according to the Greek law you are allowed to exercise, to work as a second mate.

(28) I move that is stricken as not responsible to the question. Can you read English?

Not very well.

* * * * * *

(29) * * * Mr. Waesche: Do you know how to operate a R.D.F.

Yes I do.

How does one go about operating a R.D.F.

You open it and you turn it on the station, and you fix it on the frequencies that it shows to you and you place the acoustics on your head and it shows you certain characteristics and you cannot distinguish the one from the other, you are searching, you are regulating it, and just at the point the voice, the sound is dying out; on certain

points the sound goes off and there is a line there and you can see the direction.

Are you familiar with the International Rules of the Road.

Yes I am.

According to the International Rules of the Road, what is the time duration of a short blast.

Some seconds.

How many seconds.

About three or four seconds.

What is the time duration of a prolonged blast.

(30) Long blasts when it is misty, cloudy, one till two minutes.

What is the time duration of a prolonged blast.

One minute.

According to the International Rules of the Road what type of vessel displays at night red and green side lights and three white lights in a vertical line one over the other.

It is heading towards you and it is towing another boat.

If a vessel is engaged in towing in a fog what whistle signals should be sound.

I do not remember it.

What is a backing signal.

What color has it behind.

No, no. What whistle should be sounded on board a ship when its engines are going astern.

When it is going backwards.

Yes.

Three short blasts.

Are you able to make a radar plot.

(31) I do not know what you mean. Can you describe it.

By observing on your radar the time bearing and range of an approaching vessel are you able to find the nearest approach that the vessel will come to your ship.

Yes, I can.

Excerpts From Deposition of Paraskevas Alexopoulos.

All right. What did you need to do that.

Mr. Baillie: A radar to begin with.

Mr. Alexopoulos: I will turn on the radar or will open it. I will fix it in the miles that I have read and it will show me the place.

Mr. Waesche: Do you need to use a maneuvering board to obtain the closest approach of the vessel.

Mr. Baillie: I think it is about time that I object to this line of questioning. It is obvious that with respect to the interpreter he does not know these technical terms and he cannot translate them sufficiently well into Greek that the witness understands them and I think that is a very unfair cross-examination.

Mr. Waesche: Mr. Baillie, the witness is demonstrating throughout that he is very familiar with the English language.

Mr. Baillie: I object to that statement because I do not think it is true.

Mr. Waesche: I now ask you to assume that you are on the bridge, the radar is working properly and you see the pip or echo of an approaching vessel. Now I ask you to assume when you first observed the pip or echo the time is at 15.10 hours (32) the bearing is 03 relative and the range is 8.500 yards.

Mr. Baillie: Further objections. These questions have nothing whatsoever to do with the case and are not rele.-vant.

Mr. Alexopoulos: What kind of course do we have.

Mr. Waesche: I did not give you a course. Very well, if you wish a course I ask you to assume that your own ship is on a course of 110 degrees true and she is making a speed of 12 knots.

I do not care about speed. I can put it on the chart, I have not worked on this but I can point it out on the chart.

Excerpts From Deposition of Paraskevas Alexopoulos.

I ask you to assume again that you observed the radar at 15.12 hours, the approaching vessel is then bearing 029 degrees relative and the distance is 7.600 yards. I give you one more time. Finally assume that you look at the radar at 15.14 hours, the approaching vessel is bearing 026.5 degrees and the range is 6.700 yards. How close will that ship come to your vessel.

I have not worked with this. I cannot work with it either to the right or to the left.

How close will that vessel come to yours.

I am not sure 100%, I have not worked with it. I see it for the first time. We do not have this on the ship. Are these miles. These figures here, what do they mean.

Whatever you want them to mean.

(33) Mr. Alexopoulos in the absence of the manoeuvring board what do you do to find out how close an approaching vessel is coming to your vessel.

We check the radar, the exact time, the course, we check it on the radar.

Just by looking at the radar screen do you know how to determine how close another ship is going to come. Do you know how to determine the actual course and speed of the approaching vessel.

Not exactly, but I can define it.

How.

I will take it at one point. I have the first point I have a distance of 10 miles e.g. and after 10 minutes or a quarter of an hour I see at what distance the ship is now and this time it is the distance between me and the other ship. I know my speed and can define the other speed also.

Just by looking at the radar.

Yes.

* * * * * *

(34) * * * What watch did you stand.

From 12 till 4.

Excerpts From Deposition of Paraskevas Alexopoulos.

Was the radar of the NICOLAOS S. EMBIRICOS turned on at any time during your watch from midnight on the 14th until the ship stranded.

No. I have not turned it on.

In your opinion was the radar on board the NICOLAOS S. EMBIRICOS working efficiently at the time the vessel stranded.

It was good, it was okay.

Do you recall testifying before the Greek Government.

I have testified exactly the same.

You did testify before the Greek Government in connection with this casualty.

Yes, I did.

(35) Do you recall telling the Greek Authorities and I quote:

Mr. Baillie: Just a minute please. Before you start quoting English I would like you to prove that the translator of that from Greek to English was competent and what was done there was an exact translation of what was said in Greek at the hearing.

Mr. Waesche: Mr. Baillie, I would be delighted if you want to produce the Greek copy. Do you have it.

Mr. Baillie: I am not producing anything. No I do not have it.

Mr. Waesche: What I have is an English translation of it which was furnished to me by a Greek attorney.

Interpreter: May I say something. An English translation has to be attached to the original and to be sealed. I say that from my own. . . .

Mr. Waesche: I make clear, did you not say to the Greek Authorities "I make clear that what I have said in my earlier statements about the radar to start with I remember that the radar apparatus was presenting damage which we were repairing at each port. Consequently I conclude that this was not given perfect service.

Excerpts From Deposition of Paraskevas Alexopoulos.

Mr. Baillie: I object. Obviously Mr. Alexopoulos did not say those words.

Mr. Waesche: Did you so tell the Greek Authorities.

Mr. Alexopoulos: When I testified there before the Greek Authorities I was asked by the Greek Authorities whether it was functioning. I said it was functioning. Some times it (36) gave us the wrong information. I had said that I am reserved to testify before the Court because it was functioning well but at a certain moment everything was disappeared.

Mr. Baillie: The examiner did not read the sentence following his quote from this translation. It reads as follows: "But I think that the target mentioned of 10 meters and with a distance of 10 to 15 miles provides satisfactory surface to be shown on the radar".

Mr. Waesche: Is that what your translation reads Mr. Baillie. Well, mine reads the same.

I would like to mark for identification this Cargo Exhibit 5.

Mr. Baillie: I object. If you will notice that I will object to your attempt to introduce the evidence of the trial . . . of the translation.

Mr. Waesche: Mr. Baillie, if there is any question whatsoever about the accuracy of this translation I request that you produce your own.

Mr. Baillie: I produce nothing what you have not already seen and I do not propose to prove the accuracy of my translation either. I want to use these cross-examinations that you procure you go ahead and prove it.

Mr. Waesche: Mr. Blackiston, do you object to the translation that I have.

Mr. Blackiston: Yes, I do.

Mr. Waesche: I ask the same with you, to produce the one that you have.

Mr. Blackiston: You produce the Greek.

Excerpts From Deposition of Paraskevas Alexopoulos.

(37) Mr. Baillie: You are cross-examining on the basis of something you have, not something we have.

Mr. Waesche: All right. I am just going to try and show that it is accurate that all of us have the same translation. Mr. Alexopoulos, why did not you turn on the radar when you came on watch at midnight.

Mr. Alexopoulos: When I needed the radar I called the Captain. I used to call the Captain to turn it on in order not to have some troubles.

What problems.

Sometimes it was going out of order. In certain ports it had been repaired. I did not wish to have troubles with the Captain, that is why I used to call him and he turned it on.

What troubles could you get in with the Captain if you turned on the radar.

It could be spolied and he would start shouting.

As a matter of fact you did not have the right to turn on the radar without the specific approval of the Captain, did you.

No, he had never forbidden us, but any time I needed the radar I called him and he turned it on.

But you had to call him first.

No, officially I was not forbidden to use it but I avoided to use it alone.

(38) Again, when you testified before the Greek Authorities in connection with this stranding, is it not a fact that you told the Greek Authorities: "(Page 2) The radar was being operated by the Master personally, consequently not only I did not think of using it but did not also have the required order for this from the Master".

Mr. Baillie: May the record note my previous objections to the use of this translation.

Mr. Blackiston: Same objections.

Mr. Waesche: Did not you tell the Greek Authorities what I have just read.

Excerpts From Deposition of Paraskevas Alexopoulos.

Mr. Alexopoulos: Can you repeat this, please.

The radar was being operated by the Master personally; consequently not only I did not think of using it but did not also have the required order for this from the Master.

I did not understand this last point. Not only, not that I did not need the radar I would have called the Captain if I needed it.

Do you deny saying that to the Greek Authorities.

Witness saying in English: I do not know what you translated because I say Greek language, I do not know what the writer translated.

Do you deny making that statement to the Greek Authorities.

What I am telling you now I said exactly the same in front of the Greek Authorities.

(39) When Mr. Laister came on board were you in the wheel-house when he turned on the radar.

Yes.

Did you observe the radar after he had turned it on.

Yes.

And did you observe echos from the islets which were about the ship.

Yes, I think it was shown.

Mr. Alexopoulos, in your opinion if the radar had been on during your watch would the stranding have been avoided.

I do not know.

Again, do you recall giving testimonies to the Greek Authorities in July 1969.

Yes.

And were you asked by the Greek Authorities: "In your opinion in what manner could the running ashore be avoided and what was the advantage to the ship by going between the islets instead of her going outside them".

Mr. Baillie and Mr. Blackiston objecting to the translation.

Excerpts From Deposition of Paraskevas Alexopoulos.

Mr. Alexopoulos: We followed safe course, we always try to choose the shortest distance if we can gain some miles.

(40) Mr. Waesche: Do you recall the Greek Authorities asking you that question.

I do not remember.

Do you remember your answer, and I quote: "The running ashore could have been avoided if the radar had been working at the time the ship ran ashore".

I have never. If the radar was functioning it could have been avoided but the ground was low, too low for radar it is difficult to show where the ground is 1 meter. I have stated that the trees and the ground were surpassed 10 meters or 30 feet and the trees were not densely planted.

Is it not a fact that when Mr. Laister turned on the radar he did obtain echos from the islets.

I have told you I do not remember. I think he obtained them but the bow of the ship was stranded already on the land. There was a distance of 3 miles.

Mr. Baillie: Further objections. Mr. Waesche only took the first sentence of a long answer, at least as it is according to my translation. This translation I have goes on . . .

Mr. Waesche: Do you want to read your translation.

Mr. Baillie: No, I am objecting to your question.

Mr. Waesche: Would you please mark the translation of the testimony given by this witness before the Greek Authorities on July 2nd, 1969 as Cargo Exhibit 6 for identification.

(41) Mr. Baillie: May the record note that what Mr. Waesche has said is nearly what has been written on that page.

Mr. Waesche: Mr. Alexopoulos, in May of 1969 were you capable of determining the set and drift of an ocean current?

Excerpts From Deposition of Paraskevas Alexopoulos.

Mr. Alexopolous: Of course, but it was the job of the captain, I only get advised.

Would you as a second officer ever question the captain's navigation?

Did you say to question the correctness?

That is true.

I cannot check the captain and neither the captain is advised by the second officer.

Did you tell the Greek Authorities on August 13, 1969, that you were not competent to reckon with the currents?

Mr. Baillie: I object to that, too.

Mr. Alexopoulos: Not that I am not capable, it is not my job.

Mr. Waesche: Do you deny telling the Greek Authorities that you were not competent to do so?

Mr. Baillie: I object to that question on the further ground that you nearly summarizing something. Nobody knows what that translation is, who made it, how accurate it is and now you are summarizing this translation.

Mr. Waesche: My question is: do you deny telling the Greek Authorities that you were not competent to reckon with the currents?

(42) Mr. Alexopoulos: I should see it with my own eyes what they have written down in Greek.

Mr. Baillie: Mr. Alexopoulos, do you know how to estimate the set and drift of an ocean current. Do you know how to do it?

Of course, I can take it from the chart, I can estimate it.

I am talking about observing it from the ship.

You said about the current?

Is that the answer?

Yes, I can.

Was it your job or the captain's job to make the estimate?

Excerpts From Deposition of Paraskevas Alexopoulos.

It was the work of the captain. It was the captain who was the navigation officer. I only get advised by the captain.

Mr. Blackiston: Mr. Alexopoulos, Chittagon was the last port of call before the stranding, I understand. Is that correct?

No, Colombo was the last port.

Do I understand thta the radar was repaired at Chittagon?

Yes.

When the Englishman came on board after the stranding and checked the various instruments on board did you observe the radar or was he checking it?

(43) I think that the radar was working, was functioning well, but I do not remember it is three years ago.

Mr. Blackiston: No questions.

Mr. Waesche: Mr. Alexopoulos, I asked you to assume that the m.s. NICOLAOS S. EMBIRICOS is steering a course of 233 degrees true and has maintained that course for 11¾ hours, during which time the vessel has proceeded a distance of 1.65 miles; in the area in which the vessel was travelling during that time interval, there is a current setting in the direction of 105 degrees true at a speed of 1.5 knots. Under those circumstances what would be the course made good and the speed made good for the ship?

Mr. Baillie: Do you want it in absolute acres?

Mr. Waesche: Yes. No wind, calm seas.

Mr. Alexopoulos: What have you said last?

Under those circumstances. . . .

Mr. Waesche: The course made good and the speed made good.

I can find it, the course whether it was good or not.

No, what would be the course that the ship actually made good, over the bottom?

Excerpts From Deposition of Paraskevas Alexopoulos.

I would estimate it on the chart.

No, I do not want an estimate, but I want an actual course and an actual speed.

(44) Without a chart I cannot do it.

There is a chart before you. Do you have your answer?

11 miles behind and down and towards the direction of the current.

My question is what would be the course made good?

It is not my job, that one.

Can you do it. Can you give me an answer?

Yes.

Well, do it, please.

The course made good and the speed made good. 238.

Can you give me the speed.

About 12.70 knots.

I offer the chart upon which the witness has made his markings as Cargo Exhibit 7.

May the record indicate that the markings which have been erased, but are still visible, 20.55 and 5/14 were placed on the chart prior to the time as it is given to the witness. In fact, none of the Arabic figures which were written in pencil on the chart were made by the witness.

I have no further questions.

(45) Mr. Baillie: May I have the chart, please. Mr. Alexopoulos, I would like to have you to tell me exactly what you did here. Explain to me what you did.

Mr. Alexopoulos: I took a point. I took the direction that I was given.

The direction of what.

The course.

The course for your vessel, the true course for your vessel that was given to you, is that right. What else did you do.

I took into consideration the direction of the current.

Excerpts From Deposition of Paraskevas Alexopoulos.

Which way did you intend to indicate the assumed vessel was proceeding.

Mr. Waesche: I object to the form of the question.

Mr. Baillie: What is wrong with that.

Mr. Waesche: You *intend* to indicate . . .

Mr. Baillie: Would you please tell us which direction did you intend to indicate the vessel was proceeding by this long line which you have drawn on the chart.

Mr. Alexopoulos: I was given this course.

Mr. Baillie: I understand, now what is the course please. (46) When you draw a line away from the centre of the compass roll towards the south-west, right, does that mean that this course line here is in the direction of 233 degrees. The direction actually used is 235, right?

Yes.

What is the circle up at the top here of that line. We assume a certain point that the vessel was found. And you began on 165 miles. Is that right.

Yes.

Now, where did you apply the drift, what point did you apply the drift.

In the distance. I was given that there was a current of 1.5.

I understand that. Now where did you apply.

105.

Prior to your course line that you had previously drawn.

Mr. Waesche: The witness has placed a mark on the chart which I will now label, if I may, under letter A and has placed the parallel rules between letter A and another point which I will now mark with the letter B.

(47) Mr. Baillie: I thought you told me, Mr. Alexopoulos, that as soon that the vessel began at that point, and I am pointing to the point surrounded by a circle, if the vessel began at that point, how came you to drift there, how do you happen to apply to drift there.

Excerpts From Deposition of Paraskevas Alexopoulos.

There are many types to place the current, but these are another one.

Can your current have an effect before your ship even gets on her way.

Mr. Waesche: I object. You are leading, Mr. Baillie.

Mr. Baillie: Will that current have any effect upon your ship even before your ship starts on its course.

Mr. Alexopoulos: I did not come here to be examined, I was examined in Greece about these things and I was good there to pass this test. And if you go on this point, I am not going to testify on this point. It was a job of the captain.

Mr. Baillie: The examination of Mr. Alexopoulos is over.

Exhibit D.

Translation of transcript of testimony given by Alexopoulos before Harbor Corps Inquiry Officer on July 2, 1969.

Translation from the original Greek text.

REPORT ON EXAMINATION OF WITNESS ON OATH

At Piraeus, this Wednesday, the 2nd day of the month of July, 1969, before me Paschalis GERAKARIS, Lieutenant of the Port Officers' Corps, Inquiries Officer at the Piraeus Central Captain of Port's Office there being also in attendance in the capacity of second examining officer, Chief Petty Officer Ioannis YIANNOS of the Port Officers' Corps, there appeared the Witness named below who, on being asked to state his identity, declared that his name was *Paraskevas* ALEXOPOULOS—
son of Antonios and Maria, born at Pyrgos of Tinos, and resident there, aged 39, a seaman by profession, a Greek citizen and a Christian Orthodox by religion, simply knowing the accused and in no way related to him by friendship or family bonds:

AND, on taking the oath on the Holy Bible in accordance with Articles 218 and 219 of the Code of Civil Procedure and on being duly interogaged he stated the following:

I was serving in the Capacity of Second Mate on board the Cargo M/V "NICOLAOS S. EMBIRICOS", Andros Register No. 277. The ship belonged to the CIA NAV. EPSILON S.A., and had been built in England in 1958. I was actually engaged on the 3rd April 1968 at Ravenna of Italy and was discharged on the 12th June, 1969. I hold a commanding officer's Ticket, Grade A', as from 1956. As Second Mate I have served on two more ships, for five (5) years in all.

The ship loaded at ports of the Far East general cargo for America. In all she loaded 6230 tons. The ship sailed

Exhibit D.

from COLOMBO on the 13th May, 1969, bound for Durban where she was to complete her cargo and to take supplies.

The ship possessed a Radar, a Depth Finder, a Gyro Compass, an automatic rudder and a magnetic compass. All the above instruments were working well. The Radar was being operated by the Master Eustratios KOUTSOUKOS. The distance from COLOMBO to DURBAN I do not know ~~in~~ how many miles it is. The ship's speed was 13, 5-14 knots. On each watch at the bridge there were one Second Mate or the Chief Mate and one sailor. I mean when the ship was going and in particular after our sailing from Colombo. After Colombo I was doing the 12-4 watch and the 4-8 watch was done by the Chief Mate and the 8-12 by the Second Mate Georgios MARINATOS. There was on duty with me the helmsman sailor Nicholas GLYMENAKIS. The said sailor was not a helmsman but a look out man because the rudder was automatic.

On May 15th, 1969, and at about 01,22′ the ship ~~sailed~~ run ashore on the SUVADIVA ATOLL islet of the Indian Ocean. She run ashore with the bow and at the speed of 13½ knots. At that time in relation to our course we had a head wind weather of the force of 4 Beaufort. At the time the ship run ashore the Radar was not functioning. When the ship run ashore the ship's course was true 240 degrees. During my watch as from 00.01, of the 15th May, 1969, no alteration of the course was effected. The alteration of the course had been done at 23.45′ of the 14th May 1969 by the Second Mate MARINATOS. The previous course was 233° true. At the time the course was altered the Master was not on the bridge. This I was told by the Second Mate MARINATOS. The course I was following was shown noted on the chart which has been saved and is to be found in the offices of the Owners in Athens. The course on the chart had been drawn by the Master. The chart was of British issue with corrections of 1958. The

course noted was passing 16 miles ~~of~~ east of the islet on which we run ashore. I mean from the right end of the islet, that is we were leaving the islet on the left Starboard of the course drawn there existed another islet. The opening between the two (2) islets was 58 miles. I do not remember what the ship's position was at the time of alteration of the course. This was shown on the chart. During my watch I did not reckon the ship's position because there were clouds. The last position assessed was that of the noon of the 14th May, 1968. This was a noon between theoretical reckoning position. The islets ~~through~~ which our course was going had no Lights or Lighthouse. After she run ashore the ship remained in the direction of true a/course of 250 degrees. The ship was contacting the bottom at Nos. 1 and 2 holds. After/running ashore the ship assumed a listing in the starboard direction of 3 degrees and her bow rose, being sunk only by 6 feet. Whereas the ship's aft was reaching 27 feet. The average draught of the ship during the voyage was 22'6". After she run ashore, the forepeak at first got filled with water, as well as No. 1 double bottom. The bottom of the sea at the point we had run ashore consisted of coral reefs. After our running ashore I performed or rather ordered via the telegraph the engine to hold, and this operation was carried out in a short time. I also informed the Master, having first switched the telegraph to "astern". The operation of the engine Astern was performed till 04.00. I also got the alarm bells going and these were working with batteries giving electricity current. The bells were heard but slowly.

QUEST: In your opinion in what manner could the running ashore be avoided, and what was the advantage to the

ship by going between the islets instead of her going outside them?

ANSW: The running ashore could have been avoided if the Radar had been working at the time the ship run ashore. About this point I have reservations to make as sometime the Radar is effective and sometimes not. The height of the islet on which we sat was low generally and does not exceed ten (10) meters together with the height of the trees. I do not know to what extent the distance of the voyage would have been shortened by going between the ~~si~~ islets, the Master knows this. The ship we abandoned with the Master last on 12th June, 1969. The ship was then showing contorsions at the plates of No. 1 hold, sinking of the bow and Nos. 1, 2 and 3 holds had been filled with water.

QUEST: Who was responsible for the running ashore of the ship?

ANSW: The running ashore is attributed to the currents which prevailed in the area in question. These had not been taken into account because sometimes they go in one direction and at other times they go in the opposite direction.

QUEST: Have you anything else to state and do you know how to read and write?

ANSW: No and I know how to read and write.

MENTION is hereby made that the above statements were made by the Witness examined of his own free will (or in reply to questions put to him by us) and that the compilation of the present started at 09.00 hours and ended at 11.30 hours.

Exhibit D.

In Testimony whereof the present has been drawn up and on having been read and confirmed in the presence of the second examining officer and the witness examined it is signed by all as follows:

The Exam. Officer: The Witness Examined:

The Second Exam Officer:

Signatures

Certified True Copy

Athens.....
The Clerk.

Exhibit E.

Translation of transcript of testimony given by Alexopoulos before Greek Board of Inquiry on August 13, 1969.

Translation from the Original Greek text.

REPORT ON EXAMINATION OF WITNESS ON OATH

At Athens, this Wednesday, the 13th day of August 1969, before us G. KATSIKAS, Justice of Appeal, President of the INQUIRIES COMMITTEE OF THE SEA CASUALTIES INVESTIGATION BOARD (AEENA), and the Members of the Committee, 1) P. MAVROMATIS, Rear Admiral of the Royal Navy, Retired, and 2) I. KOLINIATIS, ~~Rear Admiral~~ Lieutenant Commander of the Royal Navy (T), there being also in attendance in the capacity of Clerk to the Committee Lieut. Commander of the Port Officers' Corps M. TRIANTAFYLLOU, there appeared the Witness named below who, on being asked to state his identity, declared that his name was *Paraskevas* ALEXOPOULOS, son of Antonios and MARIA, born at Pyrgos of Tinos, and resident there, aged 39, a seaman by profession, a Greek citizen and a Christian Orthodox, simply knowing the accused and in no way repated to him by friendship or family bonds:

AND, on taking the oath on the Holy Bible in accordance with Articles 218 and 219 of the Code of Civil Procedure he stated the following:

I refer to my statement made on the 2nd July, 1969, at the Piraeus Central Captain of Port's Office, the contents of which having been read to me I confirm and add that:

I make clear that the figure-mentioned in my statement is not 240 but 247 degrees true. There was a dead reckoning

position taken at 23.45′ of the 14th May, 1969. There was a chart which has been retained by the Owners' Office in London. The Radar was being operated by the Master personally, consequently not only I did not ~~of~~ think of using it but did not also have the required order for this from the Master. When I started my duty at midnight the only light that could be seen was the lights of another ship, that is, navigation lights, at 0.95 starboard and at a distance of 5-6 miles, and I surmise that we were proceeding in parallel line and that we were ahead of them somehow. At the time the ship run ashore the above named ship was at 120 degrees starboard and at about the same distance of 5-6 miles. I make clear what I have said in my earlier statement about the Radar: To start with I remember that the Radar apparatus was presenting damage which we were repairing at each port. Consequently I conclude that this was not giving perfect service. But I think that the target mentioned of 10 meters and at a distance of 10-15 miles provides satisfactory surface to be shown in the Radar. My statement contained in my deposition about the currents being the cause of the ship's running ashore I clarify as follows: I am not competent to reckon the currents, I do not know whether the Master had estimated them or whether he had estimated them and his estimates were wrong.

Interrogated by the Owners attorney lawyer Mr. ASTRAS the Witness replied that the Radar had been repaired for the last time by a specialiste when the ship was at Cittakong, about 15 days before the casualty. Since then and up to the running ashore of the ship, during my watches, the Radar was used only once and worked well. During the night of the day the casulaty occurred there were clouds, there was no moon, and the night was very dark. There was no foam at the point we run ashore and it was the hour when the high water was on. The Radar was working

and was put out of action at irregular intervals. The Master was not employing anyone when he was setting the ship's course on paper. The British experts who visited the ship and examined the circumstances in which ed she had run ashore check/ the calculations and the positions and found them in order and they attributed the casualty to the currents. These they stated in the presence of the Master, myself, and probably of the Radio Officer and the Chief Engineer.

I have nothing else to add and I know how to read and write.

In Testimony whereof the present has been drawn up and on having been read and confirmed it is signed by all present and the Witness examined.

The Committee The Witness examined The Clerk

(signatures)

The Attorney Lawyer
signature.

Certified True Copy

Athens.....

The Clerk

Excerpts From Testimony.

(2) Before:

HON. MARVIN E. FRANKEL,

District Judge

Appearances:

HEALY & BAILLIE, Esqs.
Attorneys for Compania Naviera Epsilon, S.A.
By: ALLAN A. BAILLIE, Esq.
JOHN C. KOSTER, Esq.

BIGHAM, ENGLAR, JONES & HOUSTON, Esqs.
Attorneys for Bingham & Company
By: DONALD M. WAESCHE, Esq.
FRANCIS M. O'REGAN, Esq.

LORD, DAY & LORD, Esqs.
Attorneys for Thos. & Jno. Brocklebank Ltd. and Cunard-Brocklebank Ltd.
By: HENRY C. BLACKISTON, Esq.
WILLIAM E. MCCURDY, Esq.

DAVID P. DAWSON, Esq.
Attorney for Keller Industries, Inc.

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(39) * * * PERCIVAL E. MAIDEN, called as a witness by the plaintiff, being first duly sworn, testified as (40) follows:

Direct Examination by Mr. Baillie:

* * * * * *

Q. By whom are you presently employed? A. I am employed by Peninsular and Oriental Steam Navigation Company of London.

* * * * * *

Q. Captain, may I ask you this preliminary question: Have you ever testified as an expert in a trial before? A. No, sir.

* * * * * *

(43) * * * Q. Have you yourself navigated in the vicinity of the Maldive Islands? A. I have.

Q. What are your duties, particular duties, with the P & O now? A. My particular duties are anything to do with the safe navigation of the ships, the upkeep and of safety equipment and any aspects of safety on board the P & O vessels.

Q. Do you carry on investigations within the company? A. We do.

Q. Do you personally? A. I do.

Q. Of marine accidents and so on? A. Marine accidents, yes.

Q. Do you have anything to do with the charts and publications which are supplied to the vessels? A. I am responsible for outfitting the whole of the fleet, with charts and publications and also with their upkeep.

Q. Your fleet is what flag? P & O ships are mostly what flag? A. All British flag.

(44) * * * Q. All British flag. A. Yes.

Q. What publications do you supply the vessels with? A. British Admiralty publications.

Q. Do you furnish them with any American Hydrographic Office publications? A. No.

Q. Do you have any system with supplying the vessels with the Admiralty publications? A. We have.

Q. What is that? A. Approximately every three months all new editions of charts and publications are airmailed to the ships. They are also airmailed notice to mariners and chart tracings for the upkeep of publications on board the ship.

Q. Since some of these ships are in worldwide trade and

would probably approach United States shores—would they? A. They would.

Q. —do you supply them with charts, American charts? A. No, British charts only.

Q. Are the masters the ones who determine whether or (45) not they want any more charts, can they do this? A. They can—

Mr. Waesche: Objection, your Honor.

A. They can do this.

* * * * * *

(47) * * * Q. We will get at it in another way. You have made a study of the chart? A. I have.

Q. And you have, I believe, examined the master's log? A. Yes.

Q. And the positions reported therein? A. Yes.

Q. You have also seen Exhibit 4, the master's calculations book? A. Yes.

Q. In which he records the calculations for determining his positions? A. I have.

Q. You have reviewed the West Indian Pilot that was aboard, Exhibit 15? A. I have.

(48) Q. And the Indian Ocean Currents folder? A. I have.

Q. Exhibit 14? A. Yes.

Q. Also you have examined, as I believe, the Ocean Passages for the World? A. I have.

Q. Considering all these publications and what you have before you, have you an opinion as to whether or not the master's navigation was correct? Have you an opinion? It calls for a yes-or-no answer. A. Yes.

Q. Will you give us the benefit of your opinion, Captain? A. In my opinion, I would have gone south of the Chagos

Archipelago and not proceeded through the One and a Half Degree Channel.

Q. In other words, you would say that the master should have gone south instead of directly toward the One and a Half Degree Channel? A. I do.

Q. What is that based on? A. That is based on information contained in the Ocean Passages of the World, which gives three routes. I (49) would choose the one south of Chagos.

• • • • • •

Q. Captain. I did not want to lead you. I point to the line that is marked 5. It is marked 5 on the chart. Have you determined what the direction of that line is? A. May I check that?

Q. Surely.

Mr. Waesche: Mr. Baillie, I will stipulate that the course line is 228 degrees true.

A. Yes, I would confirm that. 228 degrees true.

Q. Have you checked this position which is labeled "noon"? A. I have.

Q. Where did that come from? A. That came from the sight books, the captain's sight books.

Q. Do you know what date that was that that was (50) taken? A. That was the 14th day of May.

Q. Have you checked the calculations book to see whether or not that is correct? A. It is.

Mr. Waesche: May the record reflect that the chart, Exhibit 5, contains the numeral 3 on the noon position for the 14th.

Q. Given this line 5 in that position, and assuming this was the course that the master projected, what would this indicate to you as a mariner? A. It would indicate to me—

Mr. Waesche: The record does not reflect what you have indicated, Mr. Baillie. You have merely pointed to the chart.

Mr. Baillie: I have at the moment, yes. I have indicated that there is a line here, the line you asked me to specify. It is labeled 5. I have also pointed out a position here, and I wanted to ask him what—

Mr. Waesche: I think the record should reflect what position you are referring to.

The Court: The position marked 3 or noon.

Mr. Waesche: But he has not said so, your Honor.

The Court: All right.

(51) Q. Can you tell me that? A. It would appear that the noon position is to the north and to the west of the course line.

Q. You are aware, are you not, that the captain actually changed course to a course of 230? A. Yes.

Q. And that appears in the log? A. Yes.

Q. And this course is 228? A. Yes.

Q. Do you see any course line there reflecting a course of 230 true? A. No.

Q. Suppose you, without drawing any lines, use the parallel rulers to project a line of 230.

Mr. Waesche: Mr. Baillie, it will save time if you would have him do it and mark the line, because if you don't, I will on cross.

Mr. Baillie: I did not want to mark up the chart. I did not want you to criticize me for doing that.

Mr. McCurdy: Do you want another copy of the chart?

The Court: He can mark it at this point. He can mark it in red.

(52) Mr. Waesche: Perhaps we ought to have it marked in another color.

The Court: Yes.

Q. Given that line 230 and looking at the position numbered 3, what would that indicate to you? A. It would indicate that the vessel had been set to the south and to the east.

The Court: I am sorry, I did not hear you. What did you say?

The Witness: The vesel had been set to the south and to the east of the course line.

Q. Captain, how do British mariners ordinarily determine the force of the current to which a vessel has been subjected over a period of time? A. I didn't quite understand that question.

Q. If you want to determine what the strength of the current has been that you haxe experienced during the past period of time, say 24 hours—let us take it from position marked 1, noon on the 13th, to the position marked noon, No. 3, on the 14th, how would you go about determining what the force of the current was, experienced over the 24-hour period? A. I would take my D.R. position, which is the dead reckoning position on the course, on the—

(53) Mr. McCurdy: Would you speak up a little bit louder, Captain Maiden, please.

The Witness: I am sorry.

A. I would take the course on the distance over the past 24 hours and plot my position. And in comparison with that was the actual position of the ship, the difference between them being what the vessel has experienced with current.

Q. Assuming, Captain, that you know from the projection of this line of 230 that the vessel has experienced a set to the southeast—or, rather, south and east, because you said east and south, right? I don't think you used the term "southeasterly." A. No.

Q. —what would that then do with respect to your projected course for the next period of time approaching the One and a Half Degree Channel? A. Having ascertained the current, I would naturally allow for it.

Q. Would you also consider the publications available to you, specifically Exhibit 14? A. Yes.

Q. Would you examine them? You have examined that, right? (54) A. I have examined that.

Q. What did you determine from the current charts, plural, for May that you would think most likely to be encountered? A. I would expect an easterly set.

Q. Of how much strength? A. About 18 miles a day of three-quarters of a knot.

Q. How would you determine that? A. I would, from the interpolation of the current arrows, of the strengths on the direction of the current, to the northward and southward to One and a Half Degree Channel.

Q. Would you also consider the current roses? A. I would also consider those.

Q. In your fleet who determines which route will be taken? A. The master.

Q. The master. A. The master.

Q. You don't tell him yourself. A. No.

* * * * * *

(62) * * * Q. What effect if any do the monsoons have in the Indian Ocean upon currents? A. The drift in the Bay of Bengal and the Arabian Sea is greatly—the currents are greatly influenced by the direction of the monsoon blowing at the particular time.

Q. But that is quite a bit above the Maldives, isn't it?

A. No, it affects from the Equator northwards, and sometimes rather to the south of the Equator, the monsoon.

Q. What is the effect? A. The effect is, in March to September, very, very strong southwesterly winds and setting up easterly currents.

Q. Is this common knowledge to the navigator? A. This is common knowledge.

* * * * * *

(63) Cross Examination by Mr. Waesche:

* * * * * *

(66) * * * Q. What are the duties of a mate while standing a watch at sea? A. To generally look after the safe navigation of the vessel.

Q. In other words, he takes the place of the master on the bridge, doesn't he? A. He stands the watch. He is still responsible to the master.

Q. He is solely responsible for what happens to the vessel while it is his watch? A. Yes.

Q. Should a mate be a capable navigator? A. Yes.

Q. Should a mate be able to determine the course and speed of an approaching vessel when he sees the pip or echo of such a vessel on his radarscope? A. He should.

Q. Should he also be able to determine the closest distance which the approaching vessel will pass his ship? A. Yes.

Q. From radar observations. Should a mate be (67) completely familiar with the international rules of the road? A. Yes.

Q. In your opinion should a mate be permitted to freely turn on and use the ship's radar and other navigational aids, such as radio direction finder and fathometer, at his sole discretion, that is, assuming he is a competent mate? A. Yes.

Q. And if he is a competent mate, should he question

the master's navigation if in his judgment the master erred? A. He should.

Q. Is it good practice for a vessel owner to make certain that his ships are equipped with the most recent edition of the West Coast of India Pilot, which is Exhibit 15? A. Yes.

Q. Is it good practice for a vessel owner to make certain that his vessels receive notices to mariners? A. Yes.

Q. As a matter of fact, you do that with P & O, don't you? A. We do, yes.

* * * * * *

(68) * * * Q. Would you consider it good practice on board vessels for one of the ship's officers to be assigned the duty of correcting the ship's light lists, sailing directions and charts so that they will correspond with the latest information contained in the notices to mariners? A. Yes.

Q. If a vessel while proceeding at sea encounters an ocean current, will the current have any effect on the actual course and speed of the vessel over the ground? A. Yes.

Q. In nautical parlance we use the terms "course and speed over the water" and "course and speed over the ground," (69) do we not? A. We use slightly different expressions.

Q. What expressions do you use? A. We use "course and speed through the water" and "course and speed over the ground."

Q. What is the meaning of "course and speed through the water"? A. "Course and speed through the water" is the direction in which you are heading and the speed at which you are proceeding through the water.

Q. And over the ground? A. Over the ground is the course you were steering and the actual distance covered.

Q. In other words, it is actually how the vessel is proceeding from point to point? A. It is.

Q. And a navigator really must know the actual course and speed over the ground? That is of most importance, is it not? A. Yes.

Q. If a capable navigator knows the direction of the current and the speed of the current, should he be able to determine the actual course and speed of the vessel over the ground? (70) A. Yes.

Q. Captain Maiden, I am going to ask you if you would do some navigation for me. I am going to give you a hypothetical question. You might want to write it down.

I ask you to assume that the Nicolaos S. Embiricos is steering a course of 233 degrees true and has maintained that course for 11¾ hours, during which time the vessel has proceeded a distance of 165 miles. In the area in which the vessel was traveling during that time interval there is an ocean current setting in the direction of 105 degrees true at a speed of 1.5 knots per hour.

Under those circumstances what would be the course made good over the bottom and the speed made good? A. I don't think the question is quite complete, sir.

Q. All right. What else do you need? A. I would want the speed of the vessel.

Q. I gave it to you: 11¾ hours, 165 miles. A. I can deduce from that, yes.

Q. Would you get me the answer. What do you need? A. I would need a chart.

Q. I give you a photostat copy of Exhibit 5. Do you need some more room? A. I think I would need some more room to work on.

Mr. Waesche: Your Honor, can he come down to the (71) table?

The Court: Yes.

Q. What else do you need? A. A pair of rulers and a pair of dividers.

One clarification on this.

Q. Yes. A. You want to make 233 degrees true?

Q. No, no. The vessel is steering 233 degrees true. I want to know what course she will make good over the bottom when she encounters the current as I have given.

Mr. Baillie: May I ask what the point of this is, Mr. Waesche? Are you trying to prove Captain Maiden incompetent?

Mr. Waesche: No, no.

Mr. Baillie: Or did you want to prove that Alexopoulos, for example, used the current in the wrong direction?

Mr. Waesche: I want to establish the incompetency of your officers, Mr. Baillie.

Mr. Baillie: I think you, by one example on the cross-examination on the deposition, when the man couldn't even speak English, tried to establish the incompetency of my officers. Go ahead.

Mr. Waesche: There has to be a start.

(72) Q. What do you have as an answer? A. The course on that would be 160 miles—would have been 230, 160 miles.

Q. 230? A. 230, 160 miles.

Q. I suggest to you that the answer is 228. Would you check it. A. 229½.

Q. Beg pardon? A. 229½.

Q. All right, close enough. Thank you.

• • • • • •

Q. Captain Maiden, I am going to read a portion of the testimony given by Mr. Alexopoulos, who was acting second mate aboard the ship.

Mr. Waesche: Page 43, Mr. Baillie. That is Exhibit 40.

Q. "Q. Mr. Alexopoulos, I asked you to assume that the MS Nicolaos S. Embiricos is steering a course of 233 degrees true and has maintained that course for 11¾ hours, during which time the vessel has proceeded a distance of 165 (73) miles; in the area in which the vessel was traveling during that time interval there is a current setting in the direction of 105 degrees true at a speed of 1.5 knots. Under those circumstances what would be the course made good and the speed made good for the ship?

"Mr. Alexopoulos: I can find it, the course whether it was good or not."

Mr. McCurdy: Where does that appear?

Mr. Waesche: It appears down the page. There is a colloquy between Mr. Baillie and myself.

"Mr. Waesche: The course made good and the speed made good.

"Mr. Alexopoulos: I can find it, the course whether it was good or not.

"Mr. Waesche: No, what would be the course that the ship actually made good, over the bottom?

"A. I would estimate it on the chart."

And Mr. Waesche:

"Q. No, I do not want an estimate; I want an actual course and an actual speed. A. Without a chart I cannot do it.

"Q. There is a chart before you. Do you have an answer?

"Mr. Alexopoulos: 11 miles behind and down and (74) towards the direction of the current.

"Mr. Waesche: My question is: What would be the course made good?

"Mr. Alexopoulos: It is not my job, that one.

"Mr. Waesche: Can you do it? Can you give me an answer?

"A. Yes.

"Q. Well, do it please. A. The course made good"—

His answer was 238. Is that an improper answer?

A. Yes.

Mr. Baillie: 239.

Mr. Waesche: 238 was his answer, yes.

"Q. Can you give me the speed? A. About 12.7 knots."

Is that also incorrect?

A. I did not deduce the speed.

Q. The exhibit upon which Mr. Alexopoulos made his lines when he was making the computation is now Defendant's G. I show it to you. Will you examine the course lines, set and drift lines which are on that chart. A. Yes.

Q. Did he do it properly? A. No.

(75) Q. Would you say that a set and drift problem is basic navigation? A. Yes.

Q. Thank you. Sir, I am going to read to you a portion of the testimony given by Captain Koutsoukos, who was the master of the Nicolaos S. Embiricos.

Mr. Waesche: Page 40, Mr. Baillie.

I asked the captain the same hypothetical question in the exact same language. I won't bother to do it again. His answer: "That is something"—

Mr. Blackiston: What question number?

Mr. Waesche: Question No. 440 of the basic question. His answer. "That is something fantastic because I had to face the coming wind.

"Q. Just for the purpose of my question assume these facts. A. I am not going to reply because I do not want to make this assumption."

There was a colloquy. Finally, his answer: 252 degrees.

Mr. Blackiston: Do you want to give the question numbers?

Mr. Waesche: It is on page 42. The question is 457.

(76) "Q. From noon position? A. Yes. Makes 252 degrees."

Q. Is that a correct answer? A. No.

Q. The captain of the vessel also used a diagram when he was attempting to work out the problem. I show you the diagram that he prepared before he answered the question. Will you examine it? A. Yes.

Q. Did he properly work out the problem? A. I can't interpret this at all.

Q. Thank you. In other words, it is Greek to you? A. It is.

Q. It was to me too.

Mr Waesche: May the record indicate that the diagram that I just presented the witness is Defendant's Exhibit C.

Q. Captain, in your opinion should a competent navigator, after having read the information contained in the West Coast of India Pilot, Exhibit 15, and after exam-

ing the information contained on the British current chart's Exhibit 14, conclude that on May 14, his vessel would have encountered an easterly current while proceeding along a course line of 223 degrees true from his noon position (77) May 14 until he passed through One and a Half Degree Channel? A. Yes.

Q. Do you consider it good practice for a navigator to lay off the ship's course on the chart which he is using to navigate the vessel? A. I do.

Q. The actual ship's course was not laid off on the chart from the noon position May 13, was it? A. No.

Q. You have on Exhibit 5 set forth a line in red crayon, which is the course being steered 230 from noon May 13, have you not? A. Yes.

Q. Would you tell me exactly how much in miles the vessel was being set to the southeasterly from her noon May 13 position to her noon May 14 position? A. 14 miles.

Q. 14 miles? A. 14 miles.

Q. The captain testified that he believed he was being set to the north. The master erred in that respect? A. Yes.

Q. Would you consider that his error in this regard should have been fairly obvious to any competent navigator? (78) A. Yes.

Q. We have an expression in America saying that if you commit a gross and obvious error you have made a blooper. Do you have a similar expression in England? A. I can't compare it to an English expression, but we have various expressions very much similar.

Q. Was this error a blooper? A. It was an error.

Q. In your opinion, would a capable navigator, knowing that his vessel had been set—did you say 14 miles? A. 14 miles.

Q. —to the southeast between noon May 13 and noon May 14, ever lay off a course so as to proceed through One and a Half Degree Channel of 233 degrees true? A. Would you—

Q. Would a capable navigator, knowing that he had set 14 miles to the southeast between noon May 13 and noon May 14, ever set off a course from his noon May 14 position of 233 degrees true in order to proceed through One and a Half Degree Channel? A. May I make that 233 on the chart?

Q. Yes, sir. It is on the chart. A. I will just check.

(79) Q. Very well. A. The course is all right, 233.

Q. You say that course is all right? A. The course as indicated on the chart, taken through the One and a Half Degree Channel, is correct.

Q. Oh, I realize that. My question is that would you as a competent navigator ever attempt to go through One and a Half Degree Channel from the noon position of May 14 on such a course? A. No.

Q. Thank you. Why? A. Because of the easterly set of the current which I would expect.

Q. And a course of 233, given the set and drift of the current, would place you too close to Suvadiva Atoll for safe navigation, would it not? A. It would.

Q. Captain, I am going to again read part of the testimony of Mr. Alexopoulos.

Mr. Waesche: Page 29.

"Q. Are you familiar with the international rules of the road? A. Yes, I am.

"Q. According to the international rules of the road, (80) what is the time duration of a short blast? A. Some seconds.

"Q. How many seconds? A. About"—

Mr. Baillie: If your Honor please, this is all a matter which is in the deposition, and the rules of the road are standard. We know it.

Mr. Waesche: Your Honor, what I am trying to do is to get from this witness the correct answers, because the answers given by the witness were incorrect, and I want to establish this before the Court.

The Court: All right. I will allow it.

Q. "A. About three or four seconds."

Is that a correct answer? A. No, it isn't.

Q. "Q. What is the duration of a prolonged blast? A. Long blasts when it is misty, cloudy, one till two minutes.

"Q. What is the time duration of a prolonged blast? A. One minute."

Is that a correct answer? A. No, it isn't.

"Q. If a vessel is engaged in towing in the fog, what (81) whistle signals should be sounded? A. I do not remember it."

Based upon what I have read to you, do you have an opinion as to the competency of Mr. Alexopoulos, at least insofar as his knowledge of rules of the road is concerned?

Mr. Baillie: I think he ought to read all the questions and answers. Some of them were right. He has not read them all.

Mr. Blackiston: I join in that, your Honor.

Mr. Waesche: I did omit one where he did get a right answer, your Honor.

The Court: Why don't you read it, then?

Mr. Waesche: All right. The one that I omitted:

Q "Q. According to the international rules of the road, what type of vessel displays at night red and green side

lights and three white lights in a vertical line one over the others?''

And his answer: "It is heading towards you and it is towing another boat."

Do we agree that that was correct? A. Yes.

Mr. Baillie: What about the one down at the bottom of the page?

Q. All right, the one down at the bottom:

(82) "Q. What is a backing signal? A. What color has it behind?

"Q. No, no. What whistle should be sounded on board a ship when its engines are going astern? A. When it is going backwards.

"Q. Yes. A. Three short blasts."

That is correct, isn't it? A. Yes.

Q. So I think, out of about six questions, he got three right and three wrong.

* * * * * *

Q. Nevertheless, based upon what I have read, do you have any opinion as to the capabilities of Mr. Alexopoulos insofar as his knowledge of the rules, international rules of the road, are concerned? A. This is purely my opinion.

Q. Yes, sir. A. Not very good.

* * * * * *

(86) * * *

Captain Maiden, based upon what I have just read to you, do you have an opinion as to the capabilities of Mr. Alexopoulos to use radar as an anti-collision device? A. Yes.

Q. What is your opinion? A. It is my opinion that he wouldn't be able to do it.

* * * * * *

Percival E. Maiden—For Plaintiff—Redirect.

[Redirect] By Mr. Blackiston:

(88) * * * Q. Just a couple of questions. Captain Maiden, as an expert navigator and master mariner, would you say tht it was an error in navigation on the master's part to go through the One and a Half Degree Channel at that season—

Mr. Waesche: Objection, your Honor.

Q. —with the documents which the master had on board at that time, including Exhibits 14, 15, and 37, which were the current charts and the Ocean Passages of the World?

Mr. Waesche: May I have that question read back, please.

(Question read.)

Mr. Waesche: I will withdraw that objection.

A. I lost the first part of that.

Q. I am asking you if it was an error in navigation on the master's part to take the route which he did under the circumstances. That paraphrases the question I asked you a moment ago. A. Yes.

Q. In your opinion was it an error in navigation for (89) the master not to lay off the course line of 130 degrees—

Mr. Baillie: 230.

Q. I am sorry. —230 degrees true, which was the course he set on May 13 at noon? A. Yes. This is normal practice.

Q. In your opinion was it an error in navigation on his part to assume that he had been driven to the north rather than driven to the south, and the southeast, by noon when he calculated his noon position on May 14? A. Yes.

Q. Would you say that it was an error in navigation on the master's part not to take into consideration the matter of current in planning and plotting his course? A. Yes.

* * * * * *

(94) * * * HAROLD EDGAR WOODWARD, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Baillie:

* * * * * *

(98) * * * Q. You said that you were a senior superintendent engineer? A. Correct.

Q. Does that mean that you had other engineers acting under you? A. I have four below me.

Q. Four? A. Four.

(99) Q. In the course of their duties would they report to you? A. They reported primarily to me, and when I was in London I took a share of the outside duties as well.

Q. So is it fair to say this, Mr. Woodward: that over the years you became aware of the condition of vessels operated by S. G. Embiricos either by personal contact or through reports by the people working under you?

Mr. Waesche: Leading, your Honor.
The Court: I think I will allow that.
Mr. Waesche: Very well.

A. Yes.

Q. Did you board vessels from time to time? A. Yes.

Q. Whom did you see usually when you went aboard these vessels? A. Primarily captains, chief engineers, chief officers, and second engineers.

Q. Captains? A. Captains, chief officers, chief and second engineers.

Q. Did this include Captain Koutsoukos? A. Yes.

Q. Did you get to know him personally? (100) A. Yes.

Q. Do you know how long he had been working for Embiricos? A. Frankly, no. He was there for many years before I joined as master.

* * * * * *

(107) * * * Cross-Examination by Mr. Baillie:

Q. Is Embiricos S. J. Limited a ship operator? A. Yes.

Q. And in 1968, among the vessels which were being operated by that company was the Nicolaos S. Embiricos? A. Yes.

Q. Is there another office of Embiricos in Athens? A. There is.

(108) Q. What is the relation between—first of all, what is the name of the Athens office? A. S. G. Embiricos.

Q. I am sorry? A. S. G. Embiricos.

Q. What is the relationship between the Athens office and the London office? A. Two arms of the same body, as far as I can say.

Q. Same officers, same directors? A. Yes. So far as I know.

Q. One is in London and one is in Athens? A. That is right.

Q. But they are very closely related? A. That is correct.

Q. Mr. Woodward—

Mr. Waesche: Mark this for identification, please. I think it is O.

Mr. Blackiston: What is it?

Mr. Waesche: I haven't indicated what it is.

(Defendant's Exhibit O marked for identification.)

Q. Mr. Woodward, I hand you Exhibit O for identification, and I ask you if that list contains the names of the vessels which were being operated by S. G. Embiricos in the year 1968. (109) A. I accept that.

Q. I am sorry? A. I accept that.

Q. It does? A. Yes.

Mr. Waesche: I offer it in evidence.

Mr. Baillie: What is the relevancy of this?

Mr. Waesche: It comes to the question of your manning, your Honor.

The Court: Of what?

Mr. Waesche: Of manning. That will be brought out in the series of questions which I am now going to ask. The record reflects—

The Court: It is easier to let it be in, rather—

Mr. Baillie: I have no objection.

The Court: —than talking about it.

(Defendant's Exhibit O received in evidence.)

Q. Perhaps you would like to refer to it (handing). I call your attention to a ship called the Crete. A. Yes.

Q. In 1968 was she under the Greek flag? A. Yes.

Q. And in January or February of 1969 was she sold? A. I can't be sure of the date, but that is about (110) correct.

Q. About that time she was sold? A. About that time.

Q. And she was sold for scrap purposes? A. From memory, yes.

Q. In about April of 1969 was the Elani S sold by the Embiricos group? A. Yes.

Harold Edgar Woodward—For Plaintiff—Cross.

Q. And in about October of 1968 was the Metamorphosis sold? A. After so many years it is difficult to be dogmatic on dates, but she was certainly sold.

Q. About that time? A. About that time.

* * * * * *

(111) * * * Q. In about January of 1969 did the Anastassia ground and become a total loss? (112) A. Yes.

Q. And in December of 1968 did a ship called the Azuero ground and become a total loss?

Mr. Baillie: Again, your Honor, I will have to object to the relevancy of this. We don't know how these groundings occurred or anything about it.

Mr. Waesche: The fact that the vessel grounded is not important to me; the fact that vessels of this fleet, which did have on board, hopefully, qualified Greek officers were lost during the period that this unlicensed second mate was aboard the Nicolaos S. Embiricos is relevant, it is important, and it is for that reason that I am bringing this out.

Mr. Baillie: We are not at all prepared and there is nothing in the pretrial order that alleges any such fact that this is part of your case. If we had known it, we would have procured information and witnesses to show what exactly happened during those groundings.

Mr. Waesche: I will rephrase the question.

The Court: Wait. Mr. Waesche is not offering this line for purposes of showing the groundings as such. It does not matter whether the ships went up in smoke, for purposes of the present inquiry, as I understand it.

Mr. Waesche: Yes.

(113) The Court: He is just trying to show that these ships went out of the service of this company,

arguably freeing up personnel, including licensed second officers, and then he is going to argue that there should have been one of those alleged licensed second officers aboard our vessel, and there wasn't. Where that gets you I am not prepared to say. But that is your contention.

Mr. Waesche: Yes, sir.

Mr. Baillie: But, I am sorry, you are much farther along than I was. I did not realize this is what he was trying to do.

The Court: I got it from what he said.

Mr. Waesche: Yes, your Honor, that is exactly it.

The Court: All right.

By Mr. Waesche:

Q. I will put the question to you again, Mr. Witness: Is it not a fact that on or about December of 1968 the Azuero grounded and became a total loss? A. That is correct.

* * * * * *

(115) GEORGE NIKOLAOS ANDRONIKOS, called as a witness by the plaintiff, being first duly sworn, testified as follows through the interpreter:

* * * * * *

Direct Examination by Mr. Baillie:

Q. Mr. Andronikos, by whom are you employed? A. The Greek concern of S. G. Embiricos Company, Incorporated, maritime company.

Q. Will you give the reporter your residence address, please. A. No. 8 Skalistiri Street, Athens, Greece.

Q. In what capacity are you employed by Embiricos Athens? A. Now as a general manager.

Q. What functions does Embiricos Athens perform with respect to the Embiricos fleet? A. The main functions

are to settle financial claims, remittances, crew requirements, and so on.

Q. You say crew requirements. Does that mean manning of the vessels, providing officers and seamen? (116) A. The finding of crews.

Q. How do you go about finding masters for vessels, or do you have anything to do with that? A. We find available masters, and we submit their names overseas.

Q. What do you mean by overseas? To whom? A. To the Embiricos company overseas.

Q. What do you customarily do about obtaining deck officers to man the vessels, junior deck officers? A. I didn't understand the question.

Q. What do you ordinarily do in order to obtain, let us say, a second mate for a vessel? How do you obtain somebody to fill a position? A. I still don't understand the question.

Q. You hire men to fill positions on vessels, as I understand it? A. Yes.

Q. How do you go about doing that? A. First of all, whenever a seaman makes his appearance at our office, if we are seeking a certain specialty, we compare his qualifications or we go through a seamen's union that he belongs to. He submits an application to our company that possesses these qualifications. We examine his previous record, first of all from his seamen's (117) papers, and secondly whether he has any letters of recommendation in his possession.

Q. Does this apply to men who are to fill the positions of second officers? A. Especially for officers we look into it much more thoroughly than in any other case. We request information from prior employers.

Q. Do you recall hiring two officers, two men to fill the positions of second officers on the NICOLAOS S. EMBIRICOS in March of 1968? A. Yes.

Q. Did you do the hiring of them? A. Yes.

Q. Will you tell us the facts as you remember them about how you procured men to fill those positions at that time? A. According to what I remember, at the beginning of March we received a letter from S. G. Embiricos in London, which made us aware of a letter from the master, in which letter certain crew members were being requested. Among these were two second mates. In this case, in view of the fact that in the middle of March and because of the oncoming Easter holidays, the matter for us was very difficult. We sought to find the wanted parties with licenses, with proper (118) licenses. But, as you know, for us Greek Orthodox the Easter holidays are of great importance and it was not feasible to find licensed officers at that point.

Q. You did hire two men to fill the positions. Who were they? A. This happened as follows: As I remember, Alexopoulos had submitted an application to the company months ago and was asking for the position of second mate. Unable to find another one, in view of the fact that this man had served some forty months as second mate on other vessels without a license, I decided to hire at least one so as he might be able to—so that the vessel may be able to sail. This happened, as best as I remember, during the last moments.

I went to other offices, other maritime offices with whom I had friendly relations, and asked them whether they could be of help to me, because it is customary many times that when second mates are returning they would be hired by the officers for which they were already serving, and I was hoping that such a one might be available.

* * * * * *

(119) * * * A. I went down to Piraeus again, I went to the Greek Maritime Employment Bureau, and inquired whether there were any available there. The answer was no.

Finally, a day later or so, at the end of March, our agent called us in Piraeus that there was one available and he was asking for a higher salary, higher wages. I agreed, I hired him, and paid him, and he had a license.

Q. What did you pay that man? A. At that time 105 English pound sterling. That is what he asked for.

Q. What was the basic wage of a second officer, according to the union agreement at that time? A. As best as I remember, it must have been around 83 English pound sterling and 15 shillings.

Q. What did you agree to pay Alexopoulos? A. He too did not agree to go to work with that, with those wages, and I paid him a hundred, which is what he asked for.

* * * * * *

(171) * * * SPYROS NICOLAIDIS, called as a witness by the Cargo Claimants, being first duly sworn, testified as follows:

Direct Examination by Mr. Waesche:

Q. Mr. Nicolaidis, where do you live? A. In Athens.

Q. What address? A. At 6 Nivarinou.

Q. What is your occupation? A. I am a lawyer.

Q. Do you specialize in any type of law? A. Yes, I do.

Q. Have you passed the Greek bar? A. I beg your pardon?

(172) Q. Have you passed the Greek bar? A. Yes, I have.

Q. Are you licensed to practice law from the Greek Government? A. Yes, I am.

Q. Did you attend a university? A. Yes, I did.

Q. What university? A. In Athens.

Q. Did you get a degree? A. Yes, I did. A degree in law.

Q. When did you graduate from the University of Athens? A. In 1963.

Q. Have you practiced law since that time? A. Yes. Since that time I am practicing law.

Q. And since that time have you specialized in the practice of admiralty? A. Yes.

Q. In Athens? A. In Athens. In Piraeus.

Q. Do you have any other experience in shipping besides your practice of maritime law? A. Yes, I have.

(173) Q. Tell the Court. A. I have worked in the Onassis organization since 1957, from I think 1957 to 1965. After I was qualified I stayed for two years as an assistant to the legal adviser in Piraeus, and then I went out to practice.

Q. What were your duties? A. In the meantime I was in London for one year in 1957, and I attended a course on commercial and shipping law in London. And for six months in 1963 I spent the time at Ince & Co., the marine lawyers in the City of London.

Q. What were your duties while you were with the Onassis organization? A. Well, I was assistant to the legal adviser of the Piraeus office, which was mainly dealing with crew matters.

* * * * * *

(184) * * * Q. Mr. Nicolaidis, I now show you Plaintiff's Exhibit 9 and ask you what that is. A. This is the Government's Gazette No. 42B of the 15 February 1958, and includes in page 4—

(185) Q. Wait a minute. A. The Government's Gazette.

Q. Does it apply to any specific vessel? A. It does. It applies to the Nicolaos Embiricos.

Q. When was it issued? A. On the 15 February 1958.

Q. Under what law was it issued? A. Well, this Government Gazette includes a joint ministerial decision under which the Nicolaos Embiricos is registered under Greek

flag under article 13 of the Legislative Decree 2687 of '53 concerning the investment of foreign capital in Greece.

Q. Does the document have anything to do with manning requirements? A. Well, amongst the other provisions—I have to see to check the instrument, in fact, if you will allow me two minutes.

Q. Yes. A. Under article 8, the instrument of registration is dealing with manning requirements.

Q. What does it provide? A. It states that:

"8. With respect to the entire crew and regardless of capacity, the use of Greek seamen not possessing the (186) qualifications prescribed by law or even foreign seamen shall be permitted in instances where it is manifestly difficult to find suitable and competent Greek seamen readily or in instances where terms other than those prescribed by the laws of Greece, particularly terms relative to the wage scale, are being demanded by Greek seamen."

And it goes further dealing with engineering personnel.

Q. If the Nicolaos S. Embiricos was manned by an unlicensed second mate, do you have an opinion as to the duties of the owner of that vessel to replace that man with licensed personnel? A. My opinion is that—

* * * * * *

(188) * * * The Court: Let me ask you, Mr. Nicolaidis: On what are you going to base your opinion, beyond reading what you have read in the Gazette?

The Witness: I will base my opinion on the first law which I quoted and which is the basic law for the manning of Greek vessels, which is the law 2651/53, which I have already stated is the basic law which governs the (189) manning of Greek vessels.

By the Court:

Q. Which portions of that are you going to rely on in giving us this opinion? Would you refer to that? A. Yes, I will refer.

Q. Do you have the text of the law? A. Yes. It is already here, the text.

Q. Will you read to us which portions of it you rely on. A. Yes, I will. I will base my opinion on the one law already stated and on the section of this Government's Gazette.

Q. Yes. But which part of 2651, what language in it, are you about to rely on? A. It concerns irregularities—the exceptions which the law allows for the owner to do in case of urgency, emergency. This is where I will base my opinion.

Q. Will you read those exceptions to me. A. Yes, I will.

Q. Go ahead. A. Well, in section 4, paragraph 1, the basic law states the following:

"No one shall be signed on ships if he is not a registered Greek seaman and does not hold the respective (190) merchant marine or certificate of competence, where a license or certificate is required in accordance with the provisions of law then in force."

Subparagraph 2: "By way of exception, the temporary engagement, within the limits of the organic crew complement by permission of the shipping commissioner or consular officer entered in the ship's log book and shipping articles, shall be permissible whether for the purpose of filling existing vacancies in the organic crew complement or to replace those being discharged from the ship for any cause whatever, of:

"a) Greek seamen not possessing the statutory qualifications, and

"b) Foreign seamen, provided it is verified by the aforesaid officer that it is impossible to sign on seamen dealt with in the preceding section, whether because there are none such at the port in which the ship is lying or at the ports nearest thereto, from which it would be possible to travel in time to the port at which the ship is lying without delaying the ship or because there are such but they are not available for employment or they are available but on terms contrary to the provisions of law regarding the wage scale and employment conditions or they might be prejudicial to the ship's interest because of their manifest bad conduct."

(191) And it goes further. Subparagraph 3:

"In no case shall it be permissible for the foreign seamen to be preceding paragraph to exceed one-fourth the number of the ship's organic crew complement."

Q. We are not interested in that. A. Yes.

Q. Just read me the parts that you are going to rely on in your opinion from Mr. Waesche. A. "Section 5-1. Those signed on under the provisions of section 4 shall remain on board only so long as the condition precedent that it is impossible to sign on duly qualified Greek seamen set forth . . . manifestly continue to obtain."

Subparagraph 2 of the same section 5:

"If the ship has clearly assumed an obligation to return to or land the seamen engaged as per paragraph"—that section does not concern us, so there is no need to keep you.

We go to paragraph 3:

"In any case, every ship shall be required to set its crew in order so that she will comply with the provisions of law then in force, both from the aspect of number and that of merchant marine certificates of competence. Within one month, if she calls at Mediterranean ports up to (192) and

including Suez; two months, if she calls at Atlantic ports of North Africa, Western Europe and England; three months, if she calls at Atlantic ports of the United States of America and Canada."

Well, I will base my opinion on these provisions, and I go further in provision 5, saying:

"The time limits of paragraphs 3 and 4"—already mentioned—"shall be extended for a further three months in those instances in which it is not possible to land the seaman because of a prohibition by the local authorities duly certified."

So my opinion is that the existing law at that time in '68, '69, which was the basic law for the complement of Greek crew of Greek vessels, in combination with this instrument which is the ministerial decision for the registration of Nicolaos Embiricos under article 13 of the law for investment of foreign capital in Greece, make clear that the owners of the vessel should have replaced the unqualified seaman signed on board as soon as there were other available, but however not longer than the times—time limits mentioned in the basic law already in existence.

Q. And if none became available during those times, did they have to lay up the ship? A. No.

(193) Q. Suppose within those time limits no person qualified became available to replace the unqualified person, does a ship have to be laid up? A. Well, there is a provision. If it is manifestly proved that they are not available, they can take extensions.

Q. I see. A. From the shipping council. Whatever concerns the shipping council, I can't tell you it happens in practice, but this is what happens. The shipping council, they have certificates that there are no other seamen available, they can extend it for three months. It is a provision of the basic law.

By Mr. Waesche:

Q. Mr. Nicolaidis, you mentioned the word "unqualified." Did you mean by that "unlicensed"? A. Yes, sir.

Q. Mr. Nicolaidis, in 1968 and 1969 was there a branch of the Greek Government— A. Yes.

Q. —which dealt with unemployed seamen? A. Yes, there was.

Q. What was it called? A. It was the seamen—it is the Seamen's Labor Office, which was under the Ministry of Merchant Marine at (194) that time and which presently, since 1972, if I am not mistaken, is under the Subministry of Labor, Ministry of National Economy.

Q. What were the duties of the Seamen's Labor Office? What was its function? A. The function of the office was to find employment to unemployed seamen.

Q. Did that include officers? A. All sorts of seamen.

Q. Including second mates? A. Second mates.

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(202) • • • Q. Mr. Nicolaidis, I show you Defendant's Exhibit Q for identification and ask you what it is. A. Well, it is a record issued by the Ministry of National Economy, Maritime Employment Office, certifying—

Mr. Baillie: No, no, it speaks for itself, your Honor.

The Court: All right. It is an official document of that agency.

The Witness: Yes.

The Court: All right.

Q. Did you receive that in reply to the request (203) which you made—

The Court: What is the difference how he received it?

Mr. Waesche: All right.

The Court: If he kidnaped it, if it is here, we can cope with it.

Mr. Waesche: All right. I offer it, your Honor.

Mr. Baillie: Your Honor, I object to it. It is not an official document of the Greek Government at all. Manifestly on its face it is not an official document of the Greek Government.

The Court: Why do you say that, Mr. Baillie? It says "Kingdom of Greece, Ministry of National Economy, Maritime Employment Office."

Mr. Baillie: It is merely a statement of the man who wrote that.

Mr. Blackiston: Your Honor, I would add—I have not had a chance to digest this rather lengthy rule—but it does not appear to me that it has been established that the person who attested to it is known to have been one who is authorized to make the attestation. We have no way of knowing that, whether he is authorized to make it.

The Court: Well, the vice consul of the United States—

(204) Mr. Blackiston: He certifies perhaps to the genuineness of the signature, but I don't see how he would have any knowledge whatsoever of whether the particular Greek individual who signed it was authorized by his employer to make this kind of an attestation.

Mr. Waesche: There are two attestations.

The Court: The vice consul says he is empowered to certify. Do you contest the statement of the vice consul or do you say that I must not accept it?

Mr. Blackiston: I can't very well contradict the vice consul, but I don't think that there really is any credible evidence as to whether this man was in

fact authorized by his employer to make the attestation. I really don't think realistically that the vice consul would know much more than a notary does when a man comes before him and attests to his signature. It is on form of notarization, it appears to me.

Mr. Baillie: I call your Honor's attention to the fact that the rule goes on to say a reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, and so on.

The Court: What do you mean the authenticity and accuracy? Do you question the authenticity of this document as certified by the vice consul, really?

(205) Mr. Baillie: No, I really don't, I am sorry.

The Court: Then you don't need any opportunity for that. Now do you question the accuracy?

Mr. Baillie: Yes, decidedly.

The Court: In what sense? You mean his chief of bureau may have reported inaccurately the situation in his ministry or bureau?

Mr. Baillie: I not only mean that, I am sure that he did.

The Court: Why are you sure that he did?

Mr. Baillie: It would be hearsay again, but I have had my own people investigate.

The Court: And what have they found out?

Mr. Baillie: That this is not so.

The Court: Then I will give you an opportunity to have somebody fly over here and show that it is not so.

As to the portion of this certification that your shipping company did not submit any application during the period in question, that one is easy for you. If this is inaccurate in that respect, you don't

need hearsay, you have your own people to show that inaccuracy.

As to the other part of it, your company should be in a position to refute (206) this information if it is refutable.

This document is received.

* * * * * *

Cross-Examination by Mr. Baillie:

* * * * * *

(207) * * * Q. Are you saying that this instrument of approval is subject to the law 2561? A. 2651.

Q. Yes. A. No, I didn't say this.

Q. You didn't say that. A. I did not say this.

Q. Is it not a fact that that instrument of approval takes precedence over that law? A. No. I can interpret to you article 13 of the law if you are asking me. I can interpret article 13 of the respective law. But I didn't say this.

Q. You didn't. A. No. I said only that in my opinion, based on the existing law plus the article 8 of the instrument of the approval, was that the owners were obliged to do that.

Q. I take it what you are saying is that the basic law 2651 is somehow carried over into the instrument of approval; is that correct? A. Well, there is no—in my opinion there is no difference of this particular instrument of the approval concerning the Nicolaos Embiricos and the law 2651, as regards the first paragraph. If you go further, for the (208) engineers, there is.

Q. No, with respect to the first paragraph. A. The first paragraph only.

Q. I thought you read us a very short sentence in the instrument of approval. A. The first paragraph. I didn't go further.

Q. How is that the same as the long matter you read from 2651? A. Well, I thought in my opinion that it was the only relevant matter concerning the whole of the crew approval. The other part of the instrument of approval under article 8 concerns only the engineroom staff.

Q. I understand that. But from 2651 you read us a great many words and quite a few paragraphs. A. Yes, I did.

Q. Various numbered paragraphs. A. Yes, I did.

Q. And from the instrument of approval you did not read us any such provisions. So obviously there is a difference, is there not? A. In what respect is there a difference? It is a shorter provision of the law, nothing more. Shorter in words.

Q. Tell me where in the instrument of approval you (209) find any provision for the replacement of men who have been properly signed on, even though they might not have the respective licenses? Where is that provision in the instrument of approval? A. Of the Embiricos. Will you excuse me while I look?

Q. Sure, go ahead. A. Under article 8 I cannot see any provision.

Q. No, I don't think you will find one. I know you won't. You can't find it? A. I can't see any provision.

Q. Have you got with you— A. Will you explain me if I go further on this?

Q. Yes. A. What I would like to tell you is that the vessel which is under article—

Q. No, no. A. I thought I would explain to you.

Q. No, I am asking you a question. Your own counsel can come back and ask you questions. I am merely asking you whether or not there was anything in the instrument of approval similar to what you read to us with respect to— A. No.

(210) By the Court:

Q. Could I get this straight. Are you saying that pursuant to the instrument of approval its provisions govern this vessel Embiricos and not 2651? A. Well, I said that 2651 are the provisions unless in the instrument of approval are some advantages given by the instrument regarding any sort of advantages. It concerns, as the law states here, advantage regarding taxation, regarding mortgaging of the vessel, and a number of other things. And under article 8, which concerns only the crew, I cannot see myself, as the wording is stated, any further advantages than the ones already given to the owners by the existing law.

Q. But if I want to see which restrictions govern the hiring of unlicensed personnel, should I look to the instrument of approval or 2651? A. You should look at the 2651 and at the same time at the instrument of approval for each vessel, because on other vessels there are different instruments of approval where vessels are enjoying different ways of manning.

Q. So if I look at that instrument of approval and it looks to me as though they have a greater freedom to use unlicensed personnel, then that would displace 2651 to that extent? Yes? (211) A. Sorry, I didn't follow your thought.

Q. If that instrument of approval, if I read it— A. Yes.

Q. —is found to allow the Embiricos to keep people for two years without a license, then they can keep them for two years no matter what 2651 says? A. They can. They can. Because, as an example, your Honor, I can tell you other instruments of approval which were passed by the Greek Government ten years later where they specify the time which the owners—the time limits within which the ship owners are obliged to substitute unlicensed people. And it gives them longer time than the basic law 2651.

So if a legislator wants to grant more facilities, it states this in the instrument of approval. And I can show it to you, if I am allowed, I don't know the American procedure here, the Government Gazette, oh, ten years later, after the Embiricos—

Q. No, I just want to hear about these two.

The Court: All right, Mr. Baillie.

By Mr. Baillie:

Q. You would not contend, would you, Mr. Nicolaidis, that the other instruments of approval have anything to do with the instrument of approval for the Embiricos? (212) A. The other instruments of approval, Mr. Baillie, as far as I know, it is a provision in the instrument of approval.

Q. I know that. I asked you a question whether or not they would have anything to do— A. If the instrument of approval of the Embiricos has been modified, yes. If it hasn't, no.

Q. Do you know whether or not the instrument of approval of the Nicolaos S. Embiricos was modified in any way? A. Well, I base my views on the documents submitted to me.

* * * * * *

(214) * * *Q. Mr. Nicolaidis, would you translate for us the paragraph here. A. Well, we have the pleasure to request you to provide us—to supply us with a certificate stating that from April 1968 till May 1969, and particularly for the last three months of the above period, there were unemployed licensed second mates, and they were offering themselves for joining vessels.

Q. What do you understand "offering themselves" to mean? A. "Offering themselves" means that they wanted

employment, because if they are employed they could not offer themselves for becoming employed.

Q. Regardless of the wages they may be paid? (215) A. It doesn't state anything here.

Q. You do not understand— A. You asked me to translate. This is what I did.

Q. All right. I am asking you now, do you understand that when a man does whatever the Greek word is, offers himself, that that means he will accept employment?

Mr. Waesche: I object, your Honor.

The Court: Wait just a second. The question had not been finished. Accept employment at the basic?

Q. At the basic union wage.

The Court: Now, what is the objection?

Mr. Waesche: The objection, your Honor, is that he is asking this witness what a Greek officer had in mind when he offers himself for employment with respect to the wages.

Mr. Baillie: That is precisely what I was objecting to the document for originally.

The Court: If he cannot ask about that, Mr. Baillie's objection to Exhibit Q takes on dimensions that I had not appreciated before. Do you press the objection, Mr. Waesche?

Mr. Waesche: No, your Honor.

Q. What do you understand by a man offering himself for employment? (216) A. Well, from my practice, I realize that there are people who, according to their needs, offer themselves to get a job.

Q. Regardless of— A. It's according to the general rule of the offer of the demand, Mr. Baillie.

Q. Are you saying that these people would accept the basic union wage? A. Well, I am not the ship's manager. I don't deal with crew's problems in a ship's agency, so I can't tell you. But my reply is, it depends on the offer of the demand for the work. This is my reply.

Q. That is right. There is another condition to it. But you said in your experience. What is your experience? A. Well, I haven't been a ship's agent providing crew members, so I cannot tell you—

Q. That's right. A. —specifically.

Q. So you really don't know, do you? A. In the capacity I haven't done, I shouldn't know.

Q. Do you understand why you did not obtain this piece of paper covering the entire period for which you made— A. Yes, I will explain to you.

Q. Please do. (217) A. We were told by the officials that it was a hard job to check all the records back to April, and they said the maximum we can give you is from January to May. So we said give us from January to May.

Q. What records do you understand to be kept in this office, wherever this originated? A. They keep some big catalogs. They are down, at the end of the month there were 500 chief mates, unemployed chief mates or second mates.

Q. Do these records tell you about how long these men were available? A. Well, I haven't seen the records with my own eyes, because I asked one of my associates to carry out the job. So whatever I say might probably not be accurate.

Q. So really you don't know what these records really say? A. Well, I know that they keep big statements, where they entered the unemployed people who declare that they are unemployed.

Q. Do you know how a man goes down there to say he is unemployed? A. Well, I know that he has the obligation to go. I know that not all of them go. And I know

that they go when they want to find employment, already they declare (218) unemployed and at the same time they arrange for employment.

Q. How long do they stay on these rolls? How long are they kept on these rolls? Is there a period when they take their names off the rolls if they are not employed? A. I don't know.

Q. You don't know anything about that. A. No, I don't.

Q. Do you know when the man who signed this so-called certificate— A. Do I know the man?

Q. Just a minute. —became a member of this department, whatever department it is that issued this? Do you know when he became employed? A. No, I do not.

Q. Do you know whether he was actually employed there in 1968 and '69? A. No, I do not.

Q. As a matter of fact, he did not get there until quite a bit after, did he? A. Well, I think I have already replied to the question that this particular department was under the Ministry of Merchant Marine until 1972, and then it became under the Ministry of Labor.

Q. Did you or your assistant make this application? (219) Who signed it? A. My associate.

Q. Your associate. At your request? A. At my request.

Q. Is there any reason why you waited until March 5, 1973, to make this request? A. I was asked by Mr. Waesche at the end of February whether I could obtain an official record. And so I filed my application on the 5th of March.

Q. You yourself have never examined these records? A. Myself, no.

Q. Do you know whether any records are actually maintained in any of these offices of any verbal requests by ships' agents? A. Well, again you bring me to the ships' agents business, which is not my field, Mr. Baillie.

Q. So you really don't know whether there are any official records of requests for— A. No, I don't know, Mr.

Baillie. I haven't done this work before, so whatever I say might be wrong.

Mr. Baillie: I have nothing further.

* * * * * *

(228) * * * STANLEY THOMPSON, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Koster:

* * * * * *

(230) * * * Q. Do you hold a title with the Marconi organization? A. My title at the present time is that of senior development engineer.

Q. Prior to the position that you now hold did you hold a title or position? A. Yes. I was chief of the experimental laboratory until twelve months ago, when I was superseded by a younger man in view of my impending retirement.

* * * * * *

(231) * * * Q. Are you familiar with the Marconi Mark IV radar? A. Yes. I am familiar with the Mark IV radar.

Q. What is the basis of your familiarity with that radar? A. I was one of the original design team who were responsible for the development of that particular set.

Q. What did the development of this particular radar set entail, specifically from your efforts? A. From my efforts, the work which I did on the development of that equipment concerned the modulator and the pulse circuitry feeding the magnetron, which of course is the power unit in the equipment.

Q. It involved testing of the final product? A. It involved design, experimental testing, and final assembly.

* * * * * *

(232) * * * Q. Are you familiar with an organization called SAIT? A. Yes. SAIT is a Brussels-based organization which is part of the Ramac Corporation.

Q. Mr. Thompson, let me show you Plaintiff's Exhibit 38. Would you look at it, please. Is this the organization you referred to that is known as Ramac? A. This is the organization I referred to as Ramac, the Radio Marconi Associated Companies.

Q. What does that organization do? A. It is an organization of operating companies on marine electronic equipments. The Associated Companies is an organization which services equipment belonging to any other organization who are members; in other words, they service any ship which carries this type of card with it.

* * * * * *

(239) * * * Q. Mr. Thompson, based on your experience and your examination with these documents, does any pattern emerge suggesting some defect that was not caught at each particular maintenance stop and corrected?

Mr. O'Regan: Objection, your Honor; leading.

Q. Do you see a pattern at all in these documents?

The Court: No, I will allow it.
Do you understand the question?
The Witness: Pardon, sir?
The Court: Do you understand the question?
The Witness: I understand the question, yes.
Would you repeat it, please, now?
(Question read.)

A. No, I can't see any pattern which would suggest (240) that.

* * * * * *

(242) Q. Mr. Thompson, have you heard testimony during the course of your attendance at this trial indicating that the radar was operating properly as the vessel left Chittagong? A. Yes, I have heard such testimony. It is in the servicemen's records and also that the radar was operating perfectly when the ship left Colombo.

Q. Based on your knowledge of radar and your examination of Exhibit 34, Cargo Exhibit I, now that you have the testimony that the radar was operating properly when the vessel left Chittagong, do you have an opinion of whether or not the Marconi Mark IV radar aboard the Nicolaos S. Embiricos would have functioned properly had it been turned on immediately prior to the stranding? A. I have.

Q. Would you give us the benefit of that opinion, sir. A. The radar, this equipment, according to and based on the reports which I have had presented in front of me, was in perfect working order, and had it been switched on during the voyage it would have worked and given satisfactory answers.

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(260) * * * GEORGE LEONARD DANIOLOS, called as a witness by the plaintiff, being first duly sworn, testified as follows:

(261) Direct Examination by Mr. Baillie:

Q. Mr. Daniolos, where do you live? A. In Athens.

Q. What is your residence address? A. Brossopulos Street 27-29, Athens.

Q. What is your profession? A. I am an attorney at law.

Q. Are you admitted in practice in Greece? A. In Greece, in 1926.

Q. You and your associates are, of course, correspondents in this case? A. Yes, sir.

George Leonard Daniolos—For Plaintiff—Direct.

Q. What schooling did you have before you became a lawyer? A. I am a graduate of the Athens University, and I was—I became a member of the Greek bar, of the Athens bar, in 1969.

Q. I am sorry? A. I became a member of the bar of Athens in 1926.

Q. Of what has your practice consisted primarily since 1946?

Mr. Koster: '26.

Q. '26. A. '26. Mainly in the admiralty field.

(262) Q. For what clients in the shipping business or associated with the shipping business have you been the attorney during the years since your admission? A. I have acted for a lot of ship owners, for underwriters, for Greek and foreign banks, and mortgages. Certainly mainly on clients who are interested in some way in the shipping business. I had been the legal adviser for four years of the Greek Chamber of Shipping. I have been the legal adviser for approximately twenty years of the Union of Greek Ship Owners, and I am still president of the Legal Committee of that union. I have taken part in certain committees which were to draft certain laws in Greece, maritime laws, especially the law No. 1752, the law for work at sea. And I am also a member of the board of the Greek Maritime Law Association and an honorary member of the Comite Maritime Nacionale.

Q. Are you familiar or have you become familiar in your practice with what in English we have been referring to in this case as the instrument of approval? A. Yes, sir.

Q. How does a vessel owner obtain such an instrument? A. A ship owner is obtaining such an instrument by filing an application to the Ministry of Merchant Marine and supporting it by certain documents which will satisfy the (263) Ministry that this owner is controlling, the owner who is

going to be the owner of a certain vessel is an individual or a foreign company controlled by Greek interests.

Q. Have you as an attorney assisted ship owners in preparing these applications? A. Yes. I think that my firm has filed several hundreds of such applications.

Q. Are all such applications granted? A. Not always. If one cannot satisfy the Ministry that the company which is making the application is controlled by Greek interests, then the application is dismissed.

Q. Are you familiar with Greek Law No. 2651, of which we have also had testimony in this case? A. Yes, sir.

Q. Will you explain the difference under Greek law between such a law as Law 2651 and an instrument of approval? A. Well, the law 2651 is a law of general application. An instrument of approval is a specific law which has been issued by the Government after an express authority of the Constitution and is to apply only on a certain vessel, on the vessel to which this instrument of approval is referred.

Another difference is that a law of general (264) application, like the 2651, may be changed, whatever the government or the legislative authority decides about it. An instrument of approval is not to be changed at any rate unless the owner and the mortgagee of the vessel concerned are giving their consent. That is, it is a law which will govern a Greek ship from the time she is registered under the Greek flag until the end, so long as she is registered as a Greek ship.

Q. I forgot to ask you, did you or someone in your office prepare the application for an instrument of approval in the case of the Nicolaos S. Embiricos? A. No.

Q. Did not. A. No.

Q. Does an instrument of approval in any way originate in or stem from or have its source in the Law 2651? A. Not at all. It is quite a different thing.

Q. From where does the Ministry, in granting such an application, in issuing such an instrument, get its authority to do so? A. It comes, that authority, from the Law 2687,

which is part of the Constitution. It is the law which has been promulgated by the National Assembly, or, rather by (265) authority of the National Assembly, and this law, the law which is giving—rather, part of the Constitution which is giving the Government the power to issue these instruments of approval.

Q. Is there any relationship between an instrument of approval and Law 2651, and if so, what is it? A. No.

Q. Mr. Daniolos, a rather long question, and I ask you to listen to it carefully. We have the text of the instrument of approval covering the Nicolaos S. Embiricos in evidence, and the text of the Law 2651 in evidence. Both of these are in Greek and also in an English translation. And we can read therein the provisions both covering the hiring of men for the various positions of the ship who have some sort of seaman's document lower in standing than the Greek manning requirements would appear otherwise to call for, and we can further read in the Law 2651 provisions covering the time such men may be continued as members of a crew, but we can find no such provisions in the instrument of approval covering the Nicolaos S. Embiricos.

Do you have an opinion whether or not under Greek law, in the absence of such provisions in the instrument of approval, the provisions of Law 2651 are picked up or (266) incorporated into the instrument of approval and then applied to the Nicolaos S. Embiricos? A. No. The provisions of the Law 2651 are not to apply, so far as time limits are concerned, are not to apply in the case where the instrument of approval does not provide any time limits.

By the Court:

Q. On what do you base that opinion, if I may ask, Mr. Daniolos? A. Your Honor, an instrument of approval

is intended to give to the owner something over and in excess of something beneficial, something of more advantages than is provided in the law of general application.

Now, we can see that both in the Law of 2651 and in the instrument of approval there is, I would say, an identical provision, that in certain cases the ship may sail with men on board without license. The difference between the law and the instrument of approval lies in this: that while in the ordinary law, in the law of general application, this is provided under condition that these men would leave the ship, would be substituted later on by licensed men, there is nothing mentioned in the instrument of approval. That was exactly the difference to which the owner was looking for when asking for that instrument of (267) approval. If it were not for that difference, to get rid of that time limits, there would be no reason why an owner would just ask the Government to have something which would be identical to another thing already enacted by the law.

Q. But my question goes to this: On what do you base your opinion, more generally, that the instrument of approval is meant to give advantages not available under the generally applicable law? What is your opinion to that effect based upon? A. You mean that the instrument of approval—what I mean is that the instrument of approval is intended to give certain benefits which are not given by the law of general application.

Q. I understand that. But I am asking you: What do you base that statement on? A. By comparing the text of the one law and the other, and also by bearing in mind that later on other instruments of approval had been given providing for certain time limits, which were still again more favorable than those provided—for the owner provided by the law of general application.

Q. Let me put it to you this way: You mentioned a law, I think, No. 2687? (268) A. Yes.

Q. Is that the law under which you say the instrument of approval is meant to give advantageous treatment to the ship owner? A. Yes.

Q. Is that it? A. Yes.

Q. And if we looked at that law, which I think is not in evidence, would it tell us that the provisions of any generally applicable law are not to govern a ship which has an instrument of approval? A. Yes. It says something like that. It says that these instruments of approval will override any existent or future law or even a law of public order. When you have to choose between the two laws, you will just have to apply the instrument of approval, just because there is that express provision in the Law 2685.

* * * * * *

(270) * * * Q. Is there no basic control over the safety of a vessel insofar as the Government is concerned? A. Well, we should say that all these provisions about maning a Greek ship are aiming at two different and separate scopes: The first one is the safety of the ship. The second is to procure work at sea to Greek nationals and to Greek professional seamen.

There are general provisions, very old provisions, according to which the port authority has the right to inspect the vessel and stop the vessel in a certain port if it finds it unsafe, unseaworthy. And when we say unseaworthy, we do not mean with the meaning that is given in the United States. We mean a ship—we mean that the ship should not be put in danger, the ship at sea.

So far as these requirements are concerned, the port authority is free to stop a vessel in respect to whether there is an instrument of approval or there is somethig which is allowed to do by the law of general application. (271) It is

only on the questions where the ship safety is not put in danger at the discretion of the port authority that the port authority has the right to ignore the regulations about license and allow the ship to sail either with Greeks or with alien seamen, with or without licenses.

Q. We have referred to a phrase during the course of trial, to a phrase, or, rather, a word used in an application by Mr. Nicolaidis' partner to apply for the certificate introduced by Mr. Waesche from someone by the name of Barkis in the present department. The word was, the English word was "offer." The word "offer" as so used is ambiguous. Can you tell me what it means, the Greek word or words— A. Yes.

(272) Q. —which have been translated as "offer"? A. Yes. It was not only the word "offer" which should be translated. When we say "offering their services," we just mean they are offering their services in accordance with the terms and conditions of the collective agreement. The collective agreement is an agreement reached between the Union of Greek Ship Owners and the trades union, and which is approved, if it is approved, by the Government; and that collective agreement is part of the Greek law and it is regulating the wages for Greek seamen, even if they are not members of the trade union, and for the ship owners if they are not members of the Union of Greek Ship Owners and the ship owners say no. In the regulations regardng the Gena—Gena is that sea labor bureau—in the regulations of that bureau there is something which says nobody is to be listed there as unemployed unless he signs a written declaration that he is offering his services under the terms and the wages provided for by the collective agreement.

* * * * * *

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Complaint of	:	
COMPANIA NAVIERA EPSILON, S. A., Plaintiff, as Owner of the M.S. "NICOLAOS S. EMBIRICOS", for exoneration from or limitation of liability.	:	69 Civ. 5303

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys, as follows:

1. Compania Naviera Epsilon, S. A. ("Epsilon") is a Panamanian corporation organized and existing under the laws of Panama, the filing of corporate documents in the Public Register in the Republic of Panama having been effected in or about June, 1955.

2. Panayoti Dimetrios Christopolous ("Christopolous") was at the time of the said organization of Epsilon and has continued to date to be a Director of Epsilon.

3. Nicolas George Condylis ("Condylis") was at the time of the said organization of Epsilon and has continued to date to be a Director of Epsilon.

4. Christopolous during the month of March, 1969 was a Director of S. G. Embiricos Limited ("Embiricos"), a corporation organized under the laws of Great Britain with an office and place of business in London, England.

Exhibit 1

5. Under date of March 26, 1969, a Charter Party (the "Charter") relating to the Motor Ship NICOLAOS S. EMBIRICOS, a copy of which Charter is attached hereto and marked Exhibit A, was entered into between Thos. & Jno. Brocklebank Limited, as charterer, and Epsilon, as owner of said vessel.

6. Embiricos was duly authorized by Epsilon to execute the Charter on behalf of Epsilon and Christopolous was duly authorized to execute the Charter on behalf of Embiricos and on behalf of Epsilon and by reason thereof Epsilon was duly bound by the Charter and the terms and conditions thereof.

7. From the time of the original outfitting for the NICOLAOS S. EMBIRICOS and until the vessel's loss in May, 1969 Embiricos was the agent in London of Epsilon and was authorized to execute charters on behalf of Epsilon. When the vessel was within United Kingdom or European waters Embiricos supervised the upkeep of the vessel and gave orders for any repairs as were necessary.

Dated: New York, N. Y.
August 31, 1970

Healy & Baillie per aaa

Healy & Baillie
Attorneys for Plaintiff

Lord, Day & Lord

Lord, Day & Lord
Attorneys for Claimants
Thos. & Jno. Brocklebank
Limited and
Cunard-Brocklebank Limited

291 a

Exhibit 1

15-1967

Charter in Client's papers

H. E. MOSS & CO. LTD.
CUNARD HOUSE
88 LEADENHALL STREET
LONDON, E.C.3

CUNARD-BROCKLEBANK LIMITED

STANDARD FORM 31-7-1968

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

as Managers & Agents for Thos. & Jno. Brocklebank Ltd.

This Charter Party, made and concluded in London, 26th day of March 1969

Between Cie. Nav. Epsilon S.A., Panama

Owners of the good Greek flag (Steamship / Motorship) NICOLAOS S. EMBIRICOS of Andros

of 8460 tons gross register, and 4964 tons net register, having engines of ——— indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed * 100 A.1. at Lloyds Register of about 615000 cubic feet bale capacity, and about ——— tons of 2240 lbs.

deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ships deadweight capacity, allowing a minimum of fifty tons) on a draft of 30 feet 11 inches on Lloyds Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about 1100 t. fuel & 225 t. diesel tons-of-fuel, and capable of steaming, fully laden, under good weather conditions about 13-133 knots on a consumption of about 16-17 tons of best Welsh coal best grade fuel oil / best grade Diesel oil, now expected sail Lourenco Marques 26th March from where will proceed in ballast to present under this charterer CUNARD-BROCKLEBANK L[illegible] / Charterers of the City of Liverpool

including Deep Tanks and Reefer space. See Clauses 20,63 and 65

max.visc.1000secs. Redwd.no.1 scale @ 100°F. + 1t.diesel

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for about a trip via safe port(s) including U.S.A. in or out of geographical rotation at Charterers' option

within below mentioned trading limits. Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

prior arrival or passing Colombo.

Vessel to be placed at the disposal of the Charterers, at on taking pilot at a safe port Colombo/Chittagong range, including E.C.India at Charterers' option port of delivery to be declared latest 24 hours/ in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 6. Vessel on her delivery to be ready to receive cargo with clean swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at once and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, in proper containers, excluding fishmeal, scrap, concentrates, asphalt, logs—

ordinary cargo

pitch in bulk, petroleum coke. Charterers are permitted to carry parcels of ore and/or pigiron but limited to max. 2000 tons.

(vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number on deck at their risk, all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and ports in [illegible] Americas, and/or United States of America, and/or West Indies, and/or Caribbean Sea, and/or Gulf of Mexico, and/or Mediterranean and/or South America within Institute Warranty Limits and/or Europe and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River Plate, Black Sea and Baltic, Gulf of Finland, Hudson Bay and all unsafe ports; also excluding [illegible] and the Suez Canal when the Suez Canal is closed, also excluding Israel, Cuba, China, Vietnam, North Korea, Great Lakes, Communist Countries and Indonesia

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew, shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water, and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed. Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for cause for which vessel is responsible then all such charges incurred shall be paid by the Owners. Any fumigations ordered because of illness of the crew to be for Owners account. Fumigations to be for Charterers account when ordered on account of cargo, and also when ordered by authorities before vessel's arrival at first port of discharge, or after vessel has left last port of discharge, provided such fumigation was not ordered because of illness among the crew or because of the previous cargoes carried by the vessel. Expenses resulting from smuggling by the crew or stowaways to be for Owners account. Bunkers on hire to be for Charterers account. All other bunkers on delivery to be taken over by Owners at current prices in the respective ports. Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.

whilst on hire

used and published current prices exclusive of wharfage

galley fuel and fuel used for air-conditioning

3. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than [illegible] tons and not more than [illegible] tons and to be re-delivered with not less than one and not more than [illegible] tons. See Clause 36

Colombo

300/350t.IFO & 75/90t.Diesel & to be redelivered with 250/350t.IFO & 50/90t.Diesel if redelivery Colombo/Chittagong. If redelivery UK/Cont. then to be redelivered with 100/200t.IFO & 20/40t.D. @ price in resp.port.

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of £670 (Six hundred and seventy pounds) British Sterling United States Currency per (31) calendar months, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at a safe port Colombo/Chittagong range including E.C.India or U.K./Cont.(Havre-Hamburg range) at Charterers option or other mutually agreed. Charterers are to give Owners not less than 14 / 21 days approximate notice of vessel's expected date of redelivery, and probable port. British currency

if redelivery Colombo/Chitt. or £650 (Six hundred & fifty pounds) per day if re-delivery UK/Cont.

London

21 days provisional notice of re-delivery date also 14

5. Payment of said hire to be made in [illegible] United States Currency, semi-monthly in advance, and for the last half month of part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 8 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m. but if required by Charterers, they shall have the privilege of using vessel at once, such time used to count as hire.

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances. See Clause 34

6. That the cargo or cargoes be laden and or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely [illegible]

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers paying ~~[illegible]~~ per passenger per day for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

and discharge

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for (See Clauses 39 and 40) cargo as presented in conformity with the Mate's receipts. Charterers are to load, stow, and discharge the cargo with all reasonable dispatch.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of ~~[illegible]~~ per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally Clerks, Stevedore's Foreman, etc., Charterers paying at the current rate per meal, for all such victualling.

20/-d

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. That the Charterers shall have the option of continuing this charter for a further period of ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~ giving written notice thereof to the Owners or their Agents ~~[illegible]~~ days previous to the expiration of the first named term or any declared option.

14. That if required by Charterers, time not to commence before 14th April, 1969 and should vessel not have given written notice of readiness on or before 18th April, 1969 but if lying there at any Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness. [illegible]

and/or default

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damage to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost, and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire. (See Clauses 50 and 53)

whatsoever

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at [illegible], one to be appointed by each of the parties hereto, and the third by the two so chosen, their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.

In London

1950

19. That all ~~[illegible]~~ shall be settled at ~~[illegible]~~ and ~~[illegible]~~ according to ~~[illegible]~~ as per ~~[illegible]~~ and ~~[illegible]~~ Average Act 1950 and subsequent modifications thereof, current at the time and place where the General Average voyage ends, according to the following rules, notwithstanding the place where the ship, cargo or any other property may be at the time a General Average act occurs or may subsequently be brought. In the case of a General Average sacrifice, loss or expenditure, there shall be allowed in general average such losses or sacrifices as fairly and reasonably fall upon property which has been saved, and such expenditure as fairly and reasonably falls upon the ship, cargo and freight, and other property, the basis of contribution being the actual net values at the termination of the adventure of property which arrives at destination or is sold short of destination, and the contributory values of property delivered at intermediate ports or places being the net proceeds of sale thereof, and the values of property delivered at destination or at the termination of the adventure being the actual net value thereof after deducting therefrom the charges thereon incurred after the termination of the General Average adventure. Charterers' cargo shall contribute to General Average on the basis of [illegible] and Charterers shall not be liable to make any deposit in respect of General Average. Owners shall procure that the Master and Owners' Agents at all ports and places shall accept Charterers' guarantee for General Average deposit and collect General Average on the basis aforesaid. Charterers shall procure that their guarantee shall be accepted by the Master and Owners' Agents at all ports and places without any deposit being required. Charterers shall not be responsible for any claims for General Average which may arise through the act, neglect, default or error of navigation of the Master, Pilots or crew of the vessel, but this shall not affect the liability of Charterers to contribute to General Average in respect of cargo owned by them. Average bonds and such additional security as may be required by the Owners shall be furnished before delivery of the goods. Such deposit as the Owners or their Agents may deem sufficient as additional security for the contributions of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Owners before delivery. Such deposit shall, at the option of the Owners, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which, the Owners are not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the Owners in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the Owners, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

winchman per watch to work hatches

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire is to be suspended until she is again in proper state for the service.

Vessel last drydocked October, 1968

as per Clause 30

22. Owners shall maintain the gear of the ship as fitted, providing gear [illegible] also providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for same otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel lanterns and oil for night work, and vessel to give use of electric light when same can be used but any additional lights over those on board to be at Charterers' expense. The Charterers to have the use of any gear on board the vessel. See also Clause 30.

watchman

Clause 30

23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch or standard winch/day and night, as required. Charterers agreeing to pay officers, engineers, winchmen, deck hands and watchmen for overtime work done in accordance with [illegible] If the rules of the port or labour unions, prevent crew from driving winches, shore winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby. See Clause 30

watchmen

24. [illegible] to be subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

U. S. A. Clause Paramount

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading [illegible] to be void to that extent but no further.

Both-to-Blame Collision Clause As attached

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her [illegible] against the carrying ship or owners.

25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

acts of Pilots and Tugs

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 2½ per cent is payable by the Vessel and Owners to Charterers

on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. [illegible]

Clauses [illegible] to [illegible] the New Jason, Both to Blame & War Risks Clauses attached form part of this Charterparty.

excl. Clauses 42, 43 & 65

Printed by Parts

AUTHORITY OF OWNERS

S. G. [illegible] LIMITED

DIRECTOR

AS AGENTS

For and on behalf of Charterers

FOR H. E. MOSS & CO. LIMITED

As Agents only.

15-1967

Exhibit 1

'NICOLAOS S. EMBIRICOS'

Additional Clauses to M.V./~~---~~. Charterparty dated 26th March, 19

It is agreed that the cubic capacity given in Line 6 of the Charter is exclusive of the permanent bunker capacity given in Line 9.

Vessel is fitted with derricks capable of handling lifts as follows:-

10/5 tons and 1/25 tons

which Owners will rig and maintain in full working order. **Owners to rig the heavy lift within 24 hours of arrival within delivery port.**

31. It is understood the vessel is fully fitted with cargo battens, also fully fitted with 'tween deck hatch covers in good condition, complying with Factories Act or other equivalent regulations.

32. It is understood that shifting boards as on board will be dismantled if required by the Charterers, before delivery, and stowed out of the way of cargo spaces, to Charterers satisfaction at Owners expense.

33. Owners to supply valid Fumigation Certificate on delivery of the vessel and if this does not cover the whole period of timecharter and fumigation is necessary cost of same and detention to be for Owners' account.

34. Both Charterers and Owners each to appoint a surveyor but the time occupied for the "on hire" survey to be for Owners' account and "off hire" survey for Charterers account.

35. Owners guarantee that the vessel can safely undertake voyages in ballast without carrying solid ballast but with fuel and water ballast only.

36. Vessel to provide and maintain efficient electric light clusters as required by local port regulations for cargo work at night.

37. Vessel is able to transit the Manchester Ship Canal in ballast or loaded condition but lowering of masts, if required, to be in Charterers time and at their expense.

38. (a) If required by Charterers, the Master, Charterers and/or their Agents are hereby authorised by Owners to sign on Master's and/or Owners behalf Bills of Lading as presented in accordance with Mates and Tally Clerks receipts without prejudice to this Charter Party. ~~If required by Charterers, Bills of Lading so issued may contain the Inter-Club Demise Clause.~~ **If required by Charterers, Bills of Lading so issued may contain either of the attached Demise Clauses.**

The inclusion of either of the attached Demise Clauses in Bills of Lading will not affect Owners' right to be indemnified by Charterers against all sums reasonsbly and properly paid by them or on their behalf as a result of claims under Bills of Lading in respect of matters which are Charterers responsibility under the Charter Party.

Exhibit 1

~~The inclusion of the above mentioned Bunker Clause in Bill of Lading will not affect the right to be indemnified by Charterers against all such responsibility and property paid by them or on their behalf on a claim under Bills of Lading in respect of matters which are Charterers responsibility under the Charter Party.~~

(b) The stowage of the cargo shall be directed by and under the control of the Master and the Owners shall be responsible for the consequences arising from the cargo not being properly stowed and secured within the vessel, and being outturned at the wrong port of discharge.

H. E. MOSS & CO. LTD.,

C-B S.F. 31-7-1963

H. G. EMBIRICOS LIMITED DUNSTER HOUSE 17/18 MARK LANE E.C.3.

NICOLAOS S. EMBIRICOS

~~Additional Clauses to m.v./~~ Charterparty dated 26th March 69

38. (c) It is also agreed that the Time Charterers shall settle all cargo claims, and shall have the control and conduct of any legal proceedings that may be brought in respect of such claims. The costs of such proceedings, including limitation proceedings, shall be for the account of the party whose interests are involved.

(d) Notwithstanding any other provision of this Charter Party, in the event of the vessel loading on the berth and/or loading general cargo, the Charterers shall bear a sum equal to 1/-d. per gross ton of the vessel's Register or £75 (whichever is the greater) on any one cargo, of claims arising from improper stowage, short delivery (whether from pilferage or any cause whatsoever) and overcarriage for which there may be responsibility on the part of the Shipowner, and if the Shipowner shall from any cause have to pay such claims in the first instance he shall be indemnified by the Charterers up to the extent of 1/-d. per gross ton of the vessel's Register or £75 (as the case may be).

39. Charterers have the liberty of shipping any dangerous, injurious or inflammable cargo as shipped in their own or Associated Companies vessels, same always to be labelled, packed and carried in accordance with Ministry of Transport regulations or other equivalent regulations, **but limited to a maximum quantity of 500 tons.**

40. Notwithstanding any other provision contained in this Charter, it is agreed that nuclear fuels or radio-active products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter Party. This exclusion does not apply to radio-active isotopes, used or intended to be used for any industrial, commercial, agricultural, medical or scientific purpose, provided Owners' prior approval has been obtained to the loading thereof.

Exhibit 1

41. Charterers to have the benefit of any return Insurance Premium recoverable by Owners from Underwriters (as and when received from Underwriters) by reason of the vessel being in port for a minimum period of 30 days, provided vessel is on hire.

42. ~~Owners declare that vessel is in every way suitable for trading in and from and within the North American Great Lakes and is fully fitted with all equipment, gear, etc., required for such trading.~~

43. ~~Charterers to have the option of keeping Institute Warranty Limits, additional premium, if any, to be for Charterers' account. All other insurance for the vessel for Great Lakes trading also British is to be for Charterers' account.~~

44. It is understood that the vessel is eligible for bunkers in the United States of America and its territories and possessions - vide Directive No. 705, Office of International Trade, U.S. Department of Commerce.

45. Owners warrant that this vessel is not on the Arab Black List. In the event of a boycott of the vessel at an Arab port as a result of the Owners/vessel having contravened the regulations laid down by the United Arab Republic, Syrian or other Arabian States for the boycott of Israel, Owners hereby undertake to indemnify Charterers against all loss and expense whatsoever arising from such boycott.

46. Vessel has not called Cuba, Communist China, North Korea or North Vietnam since 1962 and is in no way subject to any ban or restriction within area of intended trading on Charterers account.

47. The vessel is to fly Charterers House Flag if required. Charterers have the option of painting the vessel's funnel with their own markings, provided same is repainted with Owners' colours before redelivery, the cost and time of such operations being for Charterers' account. ~~Charterers shall have the benefit of any return insurance premium receivable by Owners from Underwriters (as and when received from Underwriters) by reason of the vessel being in port for a minimum period of 30 days, provided vessel is on hire. Owners to indemnify Charterers against any loss or expense in connection with Owners' [illegible] for Charterers' account.~~

H. E. MOSS & CO. LTD.,

C-3 C.F. 31-7-1963

'NICOLAOS S. EMBIRICOS'

Additional Clause No. m.v. ..... Charterparty dated 26th March

48. The Owners authorise the Charterers, as Agents for and on behalf of the Owners and on behalf of the vessel, to arrange and contract for any towage, pilotage, or like services on any usual or customary terms, and/or those terms offered or required by towing companies employed where such services are furnished and the Owners ratify any such contract made by the Charterers.

49. The Master to keep a record of all Charterers' gear, equipment and/or stores supplied to the vessel and to maintain same in good condition. Such gear, equipment and/or stores to be redelivered to Charterers prior to redelivery of vessel to Owners or, if requested by Charterers, at any time during the period of the Charter in like good order and condition as supplied (ordinary wear and tear excepted). Owners to make good any shortage and/or damage unaccounted for.

50. With reference to Clauses 15 and 23, in the event of a breakdown of a winch or winches by reason of disablement or insufficient power, the hire to be reduced pro-rata for the period of such inefficiency in relation to the number of winches available. Owners are to pay, in addition, the cost of labour affected by the breakdown, either stood off or additionally engaged. This does not exempt Owners from liability for the cost of hiring shore appliances and labour in accordance with Clause 23.

51. Should the vessel be arrested during the currency of this Charter Party at the suit of any person having or purporting to have a claim against or any interest in the vessel, hire under this Charter Party shall not be payable in respect of any period whilst the vessel remains under arrest or remains unemployed as the result of such arrest, and the Owners shall reimburse to the Charterers any expenditure which they may incur under this Charter Party in respect of any period during which by virtue of the operation of the Clause no hire is payable. This Clause shall be inoperative should the arrest be caused through any act or omission of the Charterers.

52. If, during the currency of this Charter Party, there is any deviation during the course of the voyage or any loss of time whatsoever caused by sickness, or accident to crew or any other person on board the vessel (other than passengers or supercargo travelling under Charterers' auspices) hire shall not be paid for the time so lost and the cost of extra fuel consumed and any other extra expenses incurred shall be for Owners' account.

53. Should the vessel put back while on voyage by reason of an accident or breakdown, the hire shall be suspended from the time of her putting back until she be again in the same or equivalent position and the voyage resumed therefrom.

54. If, during the currency of this Charter Party, any expenditure is properly incurred by the Charterers on behalf of Owners, the Charterers shall have the right to recoup themselves in respect of such expenditure by way of deduction from hire which may become due and payable under this Charter Party, and in the case of expenditure incurred other than in sterling, conversion into sterling will be effected for the purpose of the deduction at the rate of exchange at which the foreign currency was originally purchased.

55. Should the vessel be on her voyage towards port of redelivery at a time a payment of hire is due, said payment shall be made for such length of time as Owners or their Agents and Charterers or their Agents may agree upon as the estimated time necessary to complete the voyage taking into account bunkers to be taken over by vessel and estimated disbursements for Owners' account before redelivery, and when the vessel is redelivered any difference shall be refunded by Owners, or paid by Charterers as the case may require.

Exhibit 1

56. With reference to Clause 3, if vessel is redelivered at a port where the grade of fuel oil used by her is not available, the Hago published contract price, exclusive of lighterage, ruling at the nearest regular bunkering port where that grade of fuel oil is available is to apply.

H. E. MOSS & CO. LTD.,

C-B S.F. 31-7-1968

NICOLAOS S. EMBIRICOS

Additional Clauses to M.V. [illegible]

26th March 1969.

57. It is understood that Owners will ensure that the vessel is in possession of valid certificates of efficiency of working equipment for the period of the Charter as required by the Docks Regulations of the U.K. Factory and Workshops Act, or other Laws which may be applicable, and that in the event of any delay to the vessel caused by the failure to produce such valid certificates, then Charterers may suspend hire for the time thereby lost and Owners to pay all extra expenses incidental to and resulting from such failure.

58. Charterers are not to be responsible for Stevedores or other damage to the vessel unless notified in writing by the Master at time of occurrence of such damage. Master is to co-operate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

59. It is agreed that Charterers will pay the sum of £175 per Calendar month or pro-rata whilst the vessel is on hire to cover crew overtime incurred on their behalf.

60. Crew to undertake opening and closing of hatches, also rigging of derricks as and when required by Charterers.

61. Charterers warrant that all Bills of Lading issued pursuant to this Charterparty shall contain a Clause Paramount incorporating the Hague Rules.

62. Charterers' Agents at various ports of call will attend to routine Owners' matters without Agency fee, but Charterers can deduct the outlay for Owners' disbursements from the hire. However, in any exceptional circumstances (including but not limited to crew desertions, hospitalisation and repatriation and repairs) Owners are to appoint their own Agents or pay for the services of Charterers' Agents. Owners to appoint their own agents at ports of delivery and redelivery.

63. Vessel's deeptanks, which are clean, available and suitable for ~~bulk liquid cargoes, including edible oils, latex and petroleum by-products, and/or~~ dry cargo, have a ~~grain/~~bale cubic capacity of 55700 cu. ft., and are ~~(coiled)~~ (uncoiled), deeptank space being described as per vessel's plan in Charterers' possession. ~~Owners will ensure that coils are clean and in working order on delivery.~~

Exhibit 1

64. ~~Vessel is cotton fitted in accordance with National Cargo Bureau regulations.~~ Vessel is C.O.2. fitted

65. ~~Vessel's hold space is inclusive of ——— cu/ft. refrigerated space in ——— compartments each capable of freezing down to and maintaining ——— degrees Centigrade.~~

66. Description of Vessel:

Built: 1958 Decks: One & Closed Shelterdeck, engine amids.
Hatches: Five Holds: Five
Winches: 10 electric Hatch covers: McGregor
L.O.A.: 469'7" B.E.: 61'9"
Flush tweendecks: no Lockfast space:
Fort consumption: all gear working cargo per 8 hour day is 2 tons diesel
Min. clearance height tweendeck:
Size of hatches:

H. E. MOSS & CO. LTD.,

C-B S.F. 31-7-1968

S. G. EMBIRICOS BUNKER HOUSE 17/18 MARK LANE E.C.3. LIMITED

I. BOTH TO BLAME COLLISION CLAUSE

If the liability for any collision in which the vessel is involved while performing this Charter Party falls to be determined in accordance with the laws of the United States of America, the following clause shall apply :—

BOTH TO BLAME COLLISION CLAUSE

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."

and the charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

II. GENERAL AVERAGE AND THE NEW JASON CLAUSE

General Average shall be payable according to the York/Antwerp Rules, 1950, but where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply :—

NEW JASON CLAUSE

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

and the charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

S. Straker & Sons Ltd., 49 Fenchurch Street, E.C.3.

Exhibit 1

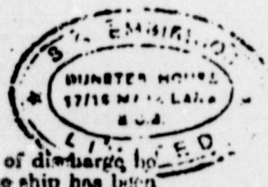
NICOLAOS S. EMBIRICOS - Charterparty dated 26th March, 1969.

CUNARD - BROCKLEBANK LTD. STANDARD FORM CHARTERPARTY 31.7.60

According to the particular service, either or both of the following terms to be incorporated in clause 38 (a) of the charter party:

" If the ship is not owned by or chartered by demise to the Company or Line by whom this Bill of Lading is issued (as may be the case notwithstanding anything that appears to the contrary), this Bill of Lading shall take effect only as a contract with the Owner or Demise Charterers, as the case may be, as principal made through the agency of the said Company or Line, who act as agents only, and shall be under no personal liability whatsoever in respect thereof"

"If the ship is not owned by or chartered by demise to The Cunard Steam Ship Company Limited this Bill of Lading shall take effect only as a contract with the Owners or Demise Charterers, as the case may be, as principal, made through the agency of The Cunard Steam Ship Company Limited, which acts as agents only and which under no circumstances where the carrying vessel is not owned by or under demise charter to The Cunard Steam Ship Company Limited shall have any personal liability as of a carrier or otherwise in respect of such contract, or howsoever in relation to any goods covered thereby."

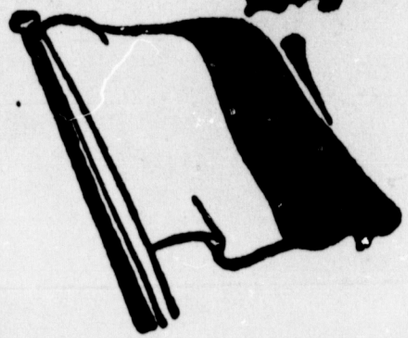


WAR RISKS CLAUSE

" (1.) No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

" (2.) The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or by any other Government or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly."

Printed and Sold by S. Straker & Sons Ltd., 40 Fenchurch Street, London, E.C.3.



BROCKLEBANKS' CUNARD SERVICE (GULF)

Owners : Thos. & Jno. Brocklebank Ltd., Liverpool

INDIA, PAKISTAN AND CEYLON
TO
U.S.A. (SAVANNAH AND GULF PORTS)

B/L No. 22

Charter

EXHIBIT
DIST. COURT
S. D. OF N. Y.
MAY 1973

AGENTS

CALCUTTA
Turner, Morrison & Co., Ltd.

COLOMBO
Delmege, Forsyth & Co. Ltd.

ADEN
Luke Thomas & Co. (Aden Shipping) Ltd.

PORT SUDAN
Gellatly, Hankey & Co. (Sudan) Ltd.

SUEZ & PORT SAID
Assuit Shipping Agency.

SAVANNAH
Strachan Shipping Co.

NEW ORLEANS
Texas Transport & Terminals Co. Inc.

GALVESTON
Texas Transport & Terminals Co. Inc.

HOUSTON
Texas Transport & Terminals Co. Inc.

CHARLESTON
Carolina Shipping Company

GULFPORT
Walsh Stevedoring Co. Inc.

JACKSONVILLE
Strachan Shipping Co.

MOBILE
Page & Jone Inc.

4 12

Shipped in apparent good order and condition (unless otherwise stated herein) by The Serampore Co. Ltd., Calcutta, India on the vessel "Nicolaos S. Embiricos" lying in or off the Port of CALCUTTA and bound therefrom on a voyage whether via Suez or via the Cape of Good Hope or otherwise as described and agreed by Clauses 8, 9, 10, 11 and 12 of this Bill of Lading the goods or packages said to contain goods (hereinafter called "the goods") specified below, warranted lawful merchandise here, throughout the voyage and at the port of discharge, and to be delivered (subject to the exceptions, limitations, conditions and liberties hereinafter agreed) in the like order and condition from the vessel's rail (where the Carrier's responsibility in all cases and in all circumstances shall finally cease) at the port of SAVANNAH or so near thereunto as she may safely get always afloat unto Gillespie & Co of New York Inc. or to his or their assigns.

Full freight is due on damaged or unsound goods and on packages, barrels or containers received part full or empty. Freight on the goods shall be deemed earned on shipment, and shall be payable vessel and/or goods lost or not lost. If payable at the port of shipment freight shall be paid by the Shipper in cash in Rupees, or by approved Bankers' Demand Draft in Dollars in exchange for this Bill of Lading. If payable in the U.S.A. or at the port of discharge (whether such port be the port of delivery named above or other port at which the Carrier is entitled under the provisions of this Bill of Lading to discharge the goods) freight shall be paid on or before arrival of the vessel at such port in cash in Dollars by the Cosingnee in exchange for Delivery Order, provided that if the vessel or the goods are lost or do not arrive at such port, freight shall be paid to the Carrier without further demand by him within 30 days from the date when delivery would in the ordinary course have been made.

Interest at 5% per annum shall be paid on any freight and charges remaining unpaid after due date of payment.

The freight payable as above has been calculated and based upon the particulars of the goods furnished by the Shipper to the Carrier. The Carrier shall be entitled at any time to open and to re-weigh or re-measure or re-value any goods, and freight shall be paid on the excess weight or measurement or value (if any) so ascertained. The expenses incident to re-weighing or re-measuring or re-valuing shall be borne by the Carrier if by the weight or measurement or value as furnished by the Shipper is found to be correct, but otherwise such expenses which shall be considered as freight shall be borne and paid by the Owner or Consignee of the goods. The Shipper shall, if required by the Carrier so to do, furnish forthwith on demand to the Carrier the invoice or a true copy thereof relating to the goods. If the description or (in cases where the value has been stated) the value of the goods has been misstated by the Shipper, double the amount of such freight shall, if required by the Carrier, be paid (as liquidated damages) by the Shipper, Consignee and/or Owner of the goods as would have been charged if the goods had been accurately described or valued, and a certificate signed by the Carrier or his Agents shall be conclusive evidence for all purposes of the amount that would have been so charged.

PARTICULARS DECLARED BY SHIPPER AND DETAILS OF FREIGHT

Leading Marks	Distinctive Numbers	Number of Packages or Pieces and Description of Goods	Leading Marks	Distinctive Numbers	Number of Packages or Pieces and Description of Goods
Made in India GOUNIBACK 8oz./36 186 PLAIN .....Yds. Gross lbs. Nett lbs. SAVANNAH Roll No.4992-4999 USE NO HOOKS	4992 4999	8 Rolls Carpet Backing Cloth for floor covering /186"-8oz./36"			GK-435C m^3 : 13-325 @ # 24.25 Per-m3 = # 323-13 Plus 15 % Surcharge - # 48.47 # 371-60

Notify:-Gillespie & Co of New York Inc,
2, Broadway, New York, N.Y.10004

TOTAL QUANTITY (in figures and words) ... { Packages Eight Rolls only.
Weight (Bulk Cargo only)

FREIGHT PAYABLE AT DESTINATION.

In Witness whereof the Master or Agent of the vessel has affirmed to Three Bills of Lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in CALCUTTA this 26 APR day of April 19 60.

For TURNER MORRISON & CO. LTD.

SEE CONDITIONS OF CARRIAGE ON REVERSE.

For the Master.

CAPTAIN'S COPY.

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Exhibit 4

IT IS MUTUALLY AGREED AS FOLLOWS :—

1. Clause Paramount. The contract evidenced by this Bill of Lading in respect of so much of the carriage hereby covered as extends from the time when the goods are received at the carrying vessel's rail at the port of loading until they are discharged therefrom, to have effect subject to the Rules set out in the Schedule to the Indian Carriage of Goods by Sea Act 1925 as applied by that Act and in so far and to the extent that any term of this Bill of Lading is rendered null and void by that Act, this Bill of Lading shall in respect of the period of carriage covered by that Act have effect as if that term had never been inserted herein. Nothing herein contained shall be deemed to be a surrender by the Carrier of any of these privileges, rights or immunities or an increase of any of his responsibilities or liabilities under that Act.

2. Responsibility prior to Loading and after Discharge and for Deck Cargo and Live Animals. The Carrier shall not be responsible for any loss or detention or of damage to the goods howsoever caused (whether by unseaworthiness or unfitness of the vessel or of any other vessel, tender, lighter or craft at any time whatsoever or otherwise howsoever).

(a) In the case of goods other than live animals or cargo which in this Bill of Lading is stated as being carried on deck and is so carried, at any time before they are received at the vessel's rail at the port of loading or after they have passed the vessel's rail at the port of discharge when but for the provisions of this Clause the goods would be the responsibility of the Carrier ; and

(b) in the case of live animals or of cargo which in this Bill of Lading is stated as being carried on deck and is so carried (none of which is subject to the Indian Carriage of Goods by Sea Act 1925) at any time when but for the provisions of this Clause the goods would be the responsibility of the Carrier.

3. Reservation of all Carrier's rights and privileges. Nothing herein contained shall prevent the Carrier from claiming in the Courts of any country the benefit of or derogate in any way from any statutory provision or exemption from or limitation of liability afforded to the Carrier or to the vessel by the laws of that or of any other country.

4. Jurisdiction. The contract evidenced by this Bill of Lading shall be governed by English law and disputes determined in England (or, at the option of the Carrier, at the port of destination) according to English law to the exclusion of the jurisdiction of the courts of any other country.

5. Agency Clause. If the vessel is not owned by or chartered by demise to the Company or Line by whom this Bill of Lading is issued (as may be the case notwithstanding anything that appears to the contrary) this Bill of Lading shall take effect only as a contract with the Owner or demise Charterer as the case may be as principal made through the agency of the said Company or Line who act solely as agents and shall be under no personal liability whatsoever in respect thereof.

6. Acknowledgement of weight, Quality Marks, etc. Where, in the case of goods shipped in bulk, the weight stated hereon is a weight ascertained or accepted by a third party other than the Carrier or the Shipper, no acknowledgment is made as to weight or quality. Where the number of packages or pieces is stated in this Bill of Lading no acknowledgment is made as to quantity, weight, or quality. The Carrier is only responsible for leading marks, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered or on the cases or coverings in which such goods are contained, in letters at least two inches high and in such manner as should ordinarily remain legible until the end of the voyage. No acknowledgement is made as to the contents of cases, packages barrels or containers.

7. Stowage. The goods may be stowed and carried under or on deck. Goods stowed in peak poop, forecastle, deck house shelter deck, or other covered-in space shall be deemed for all purposes to be stowed under deck.

8. Voyage. The vessel may at any time whatsoever whether before or after shipment or before or after proceeding towards or calling at the port of discharge proceed by any route whatsoever in the Carrier's or Master's absolute discretion (whether or not such route is the nearest or most direct or customary or advertised route between the ports of shipment or discharge) and (but without prejudice to the foregoing) may tow or be towed, sail with or without pilots and/or tugs and proceed under sail and adjust compasses and engage in trial trips of any description, whether loaded or unloaded, and whether during such trial trips the vessel be manned or navigated either wholly or partially by the Carrier's Master, officers, servants or agents or the Master, officers, servants or agents of any other person, and carry live animals and every description of cargo on deck, and further may carry (whether on or below deck or both) contraband, explosives, munitions or warlike stores or dangerous cargo of every kind to any extent, and may sail armed and unarmed and may proceed to or stay at any port or place whatsoever (although in a contrary direction to or out of or beyond the customary or intended or advertised route to the port of discharge once or more often in any order backwards or forwards) for loading or discharging mails and/or cargo and/or stores and/or fuel (whether intended to be used on this or any other voyage of the vessel or any other vessel or for storage or sale) embarking or disembarking passengers, pilots, officers, engineers or crew, towing or assisting vessels in all situations, saving life or property or for inspection of or repairs to the vessel or any part thereof, drydocking with or without the goods on board, bunkering, for the convenience or entertainment of passengers or for the convenience or assistance of the mail service (whether the foregoing purposes or any of them be for this or any other voyage) or for any other purposes whatsoever and may otherwise sail, proceed or stay in any manner or for any purpose whatsoever (even if ranking in substance another voyage or other voyages) and all such routes, ports, places, sailings and actions shall be deemed to be included within the contractual and intended voyage and any departure in pursuance of the liberties hereby conferred shall not be deemed a deviation in law ; the liberties hereby conferred shall not be considered as restricted by any words in this Bill of Lading, whether written or printed or by any circumstances attending or preceding the shipment of the goods or by the nature of the goods or construed by reference to whether any departure pursuant to such liberties would or would not frustrate the object of this Bill of Lading, any custom or rule or law notwithstanding and notwithstanding unseaworthiness or unfitness of the vessel at the commencement or at any stage of the voyage.

of the Shipper, Consignee or Owner of the goods, to enter and land or remove the goods, or to put them into craft or store.

17. Landing ; Landing Charges. The goods shall in all cases be landed by the vessel, and not by the Consignee and the landing charges shall be payable by the Consignee against delivery. Lighterage if any, at port of discharge, to be paid by the Consignee of the goods, any custom or alleged custom of the port to the contrary notwithstanding.

18. Damaged Packages, etc. The Shipper, Consignee and/or Owner of the goods shall bear and pay the cost of all mending, baling and cooperage of and repairs to or replacement of packages, boxes crates, wrappers, bags or barrels resulting from insufficiency of packing or from excepted perils.

19. Through Cargo. Goods carried at through rates via the port of shipment shall be subject to all the terms, conditions and exceptions of the Carriers bringing the same down to the port of shipment.

20. Transhipment, etc. The Carrier, his servants or agents may at any time and for any purpose whatsoever discharge the goods or any part thereof from the vessel whether before or after sailing from the port of loading and land or store either on shore or afloat or tranship or forward the same by another vessel or other vessels whether prior or subsequent in sailing to the vessel and whether sailing from the port of reception of the goods or from any other port and whether belonging to the Carrier or to any others persons. The Goods shall at all times during and after such discharge, while being so landed or in store or awaiting transhipment or forwarding be at the sole risk of the Shipper, Consignee or Owner of the goods for all purposes whatsoever but after receipt into the custody of the vessel by which they are to be on-carried, the terms, conditions and exceptions of that vessel's Bill of Lading or of the contract or carriage relating to such on-carriage shall apply in addition to but not in substitution for the terms, conditions and exceptions of this Bill of Lading.

In the event of there being no immediate opportunity for transhipping or forwarding the goods from the port where the goods are discharged for transhipment or forwarding to their ultimate destination, the Carrier shall be at liberty to enter and land the goods, or to put them into craft or store, at the sole risk and expense of the Shipper, Consignee or Owner of the goods.

21. Optional Cargo. The port of discharge for optional cargo must be declared to the vessel's Agents at the first of the optional ports named in the option not later than 48 hours before the vessel's expected arrival there, or failing such declaration the Carrier may in his absolute discretion discharge the same at the first or any optional port and such discharge shall be deemed a complete fulfilment by the Carrier of the contractual and intended voyage and all the remedies and rights of the Carrier, his servants or agents shall have effect accordingly. Any option must be for the total quantity of goods under this Bill of Lading.

22. Discharge and Delivery of Deck Cargo and Live Animals. Live animals and deck cargo to be taken by Consignee immediately on vessel's arrival, otherwise the Carrier is at liberty to land at the risk and expense of the Shipper, Consignee or Owner.

23. Refrigerated Cargo. The Carrier shall not be accountable for the condition of perishable goods shipped under this Bill of Lading nor for any loss or damage thereto arising from failure or breakdown of machinery, insulation, or other appliances, nor for detention nor from any other cause whatsoever, nor the vessel shall be at liberty to jettison the whole or any part thereof if considered necessary on account of decomposition.

24. Dangerous Goods. Any goods of an inflammable, dangerous or damaging nature shipped under this Bill of Lading without previously declaring and specially arranging for same with the Carrier may upon discovery be thrown overboard and the loss will fall upon the Shipper, Consignee or Owner of such goods who will further be held responsible for all consequential damages and render themselves liable to the penalties imposed by statute.

25. Claims. Subject to the provisions of paragraph 5 of Article IV of the Rules the liability of the Carrier, in case of loss of, or damage to, or detention of, the goods in circumstances involving him in responsibility shall be calculated on, and shall in no case exceed, the Shipper's net invoice cost and disbursements of £100 per package or unit, less all charges saved, whichever shall be least. In the case of ad valorem cargo Carriers responsibility shall not exceed the value of the goods declared before the time of shipment and inserted in this Bill of Lading.

26. Shortages, etc. If any Consignee has a shortage in the marks or numbers covered by this Bill of Lading, unclaimed goods of like kind and quality shall at the Carrier's option be deemed to constitute a part of the goods and be accepted by the Consignee as good delivery under this Bill of Lading. Where bulk goods or goods without marks, or goods with the same marks are shipped to more than one Consignee the Consignees or Owners of the goods shall jointly and severally bear any expense or loss in dividing the goods or parcels into pro rata quantities and any deficiency shall fall upon them in such proportion as the Carrier, his servants or agents shall decide.

27. Lien. The Carrier, his servants or agents shall have a lien on the goods and a right to sell the goods whether privately or by public auction for all freight (including additional freight payable as above stipulated) primage, deadfreight, demurrage, detention charges, salvage, average and for all other charges and expenses whatsoever, which are for account of the goods or of the Shipper Consignee or Owner of the goods under this Bill of Lading, and for the costs and expenses of exercising such lien and of such sale and also for all previously unsatisfied debts whatsoever due to him by the Shipper, Consignee or Owner of the goods. Nothing in this clause shall prevent the Carrier from recovering from the Shipper, Consignee or Owner of the goods the difference between the amount due from them or any of them to him and the amount realised by the exercise of the rights given to the Carrier under this clause.

28. General Average. General Average shall be adjusted according to York-Antwerp Rules, 1950, save and except that no loss of or injury sustained by live animals, whether by jettison or otherwise, shall be recoverable. Adjustments shall be prepared at such port as shall be nominated by the Carrier, superintended by the agencies of English Average Adjusters on all points on which

9. Carrier's liberties in event of blockade, delay, etc. In the event of the blockade or interdict of the intended port of discharge of the goods shipped hereunder or if the entering of, or discharging (or continuance of discharging) in, such port shall be prohibited or prevented or likely to be delayed by ice, weather, blockade, interdict, quarantine, strikes, lockouts, labour troubles (whether the Carrier or his servants are parties thereto or not) civil commotions, riot, epidemics, fever or other illness, or any disturbances or any other cause whatsoever beyond the Carrier's control, or shall be considered by the Carrier or by the Master (either of whose decision shall be absolute and binding on all parties) to be unsafe or likely to prejudice the interest of the vessel and/or her cargo whether by delay or otherwise howsoever, then the goods may at the Carrier's option be landed or put into lighters there or at the vessel's most convenient port, which shall be selected by the Carrier or his Agents or Master, at the expense and risk of the owner of the goods; and the Carrier's responsibility shall cease at the vessel's rail when the goods are so discharged, the Carrier, Master or Agents giving immediate notice of such discharge to the consignee of the goods so far as he is known. Such discharge shall constitute due delivery of the goods under this Bill of Lading, and the Owner of the goods shall bear and pay all charges and expenses incurred in consequence of such discharge, the Carrier, Master and Agents acting solely as agents of the Consignee and/or Owner of the goods after the goods have left the vessel's rail.

10. Carrier's liberties in event of war, etc. When and so long as a state of war (including civil war) exists rendering the voyage unsafe or impracticable or the vessel or her cargo in danger of capture or detention or delay and/or so long as any control over the use or movements of the vessel is exercised by any Government or other Authorities, and/or the insulated or other space on the vessel is requisitioned or controlled, the Carrier and/or his Agents and/or the Master may (if such state of war, control or requisition makes it in his or their absolute discretion reasonable so to do) at any time before or after the commencement of the voyage alter or vary or depart from the proposed or advertised or agreed or customary route and/or delay or detain the vessel at or off any port or place and/or tranship the cargo at any port or ports, place or places without being liable for any loss or damage whatsoever directly or indirectly sustained by the Owner of the goods. The vessel in addition to any liberties expressed or implied herein, shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, transhipment, discharge or destination, or otherwise howsoever given by any Government or any Department thereof or by any local authority or any person acting or purporting to act with the authority of any Government or of any Department thereof or of any local authority, or by any Committee or person having under the terms of the War Risks Insurance on the vessel the right to give such orders or directions, and if by reason of, and in compliance with, any such orders or directions anything is done or is not done the same shall not be deemed a deviation.

11. Carrier's further liberties. The Carrier, in addition to any liberties expressed or implied herein, shall, in the event of the imminence or existence of war, hostilities or warlike operations between any nations, cessation or prohibition or restriction of intercourse, commercial or otherwise, between nations or of rebellion or civil war, sanctions imposed or measures taken by or against any Government in consequence of, or connected with, any of the above contents, have the rights and liberties as set out in the preceding clauses.

12. Everything to form part of contract voyage. Anything done or not done by reason of, or in compliance with the last four preceding clauses shall be deemed to be done or not done as part of or as the case may be in fulfilment of the contractual and intended voyage, and all the powers and rights of the Carrier his servants or agents shall have effect accordingly, and nothing so done or not done shall be deemed a deviation, and the Owner of the goods and/or the Consignee thereof shall pay the full freight if not prepaid, and if prepaid the Carrier shall be entitled to retain the same.

13. Port, Customs, Consular and other Regulations. The Shipper, Consignee and/or Owner of the goods shall comply with the regulations and requirements of Port, Customs and other Authorities and shall bear and pay all duties, taxes, fines, imposts, expenses, loss or damage of whatever nature incurred or suffered by reason of any breach thereof or by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, and hereby indemnify the Carrier and his Agents and the Master and the Owners of the other cargo on board against all claims, demands, losses and expenses in respect thereof. In the event of the goods not complying with the Port, Customs or other regulations at the port of discharge, or of any of the aforesaid matters arising, the Carrier shall be at liberty to bring back, or re-ship, such goods to the port of shipment at the sole risk and expense of the Shipper, Consignee and/or Owner of the goods.

14. Undertaking to Customs. The Carrier or his Agents may, in respect of dutiable goods landed at the port of discharge, give such undertaking as the Customs Authorities at that port require with respect to dealing with the goods at the port where duty is payable, and all charges involved or liabilities incurred shall be borne by the Shipper, Consignee or Owner of the goods.

15. Discharge and Delivery. The vessel may commence discharging immediately on arrival without notice to the Consignee, and discharge continuously, irrespective of weather, by day and by night, Sundays and holidays included, any custom of the port to the contrary notwithstanding, on to quay, or into shed, warehouse, depot, hulk, lighter or any other vessel or craft as the Carrier or his Agents may determine. Delivery overside to Consignee's lighters is at the vessel's option, and if given, is subject to the Consignee providing sufficient lighters and men to receive the goods as fast as the vessel can deliver, any custom of the port to the contrary notwithstanding. Whether the vessel's tackles or shore cranes or other means be employed in the course of delivery on to quay or otherwise, any loss of, or damage or injury to, the goods, lighters or men employed directly or indirectly by the Consignee shall after the goods have passed the vessel's rail, be at the sole risk of the Consignee. The Carrier, his Agents and servants shall not under any circumstances whatsoever be under any liability for insufficient packing or inaccuracies, obliteration or absence of marks, numbers, address, or description, nor for delivery to drop marks, or quality marks, or countermarks, or numbers, nor for failure to notify the Consignee of the arrival of the goods by reason of the port to the contrary notwithstanding.

16. Carrier's rights if Consignee not ready. If the goods are not taken by the Consignee at the time when the vessel is entitled to call upon him to take possession, or if they are not removed from alongside the vessel without delay, the Carrier shall be at liberty, at the sole risk and expense of such Rules contain no provision. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier or his Agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the Shippers, Consignees or Owners of the goods to the Carrier before delivery; provided that where an adjustment is made in accordance with the law and practice of the United States of America or of any other country having the same or similar law or practice, the following clause shall apply:—

New Jason Clause. (a) In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute contract or otherwise, the goods Shippers, Consignees or Owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

(b) If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier or his Agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required be made by the goods, shippers consignees or owners of the goods to the Carrier before delivery.

19. Both to Blame Collision Clause. If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:—

If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the master, Mariners, pilot or the servants of the Carrier in the navigation or in the management of the vessel, the Owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her Owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the Owners of the said goods, paid or payable by the other or non-carrying vessel or her Owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying vessel or her Owners as part of their claim against the carring vessel or Carrier. The foregoing provisions shall also apply where the Owners, Operators, of those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

18. Surrender of Bill of Lading. This Bill of Lading duly endorsed shall be surrendered in exchange for release or delivery order if required by the Carrier, his servants or agents.

SPECIAL CLAUSES.

I. The Collector of the Port is hereby authorised to grant a general order for the discharge immediately after entry of the vessel at the Custom House. Should the Carrier desire to discharge beyond usual Customs hours the Consignee and/or Owner of the goods shall, if so required, sign immediately an application for that purpose.

II. Without waiver or limitation of any exemption from or limitation of liability afforded by law or by this Bill of Lading, neither the Carrier nor any Corporation owned by, subsidiary to or associated or affiliated with the Carrier shall be liable whersoever and whensoever occurring by reason of any fire for any loss or damage whatsoever including that occurring before loading on or after discharge from the ship, unless such fire shall be caused by the design or neglect or by the actual fault or privity of the Carrier or of such Corporation respectively.

III. If the goods are consigned or forwarded to a point where the vessel does not discharge, the Shipper constitutes the Carrier his Agent to forward the goods to or toward their ultimate destination and all liability whatsoever of the Carrier as carrier, bailee or otherwise shall cease upon the goods leaving the actual custody of the Carrier. Such forwarding Carriage shall be subject to the terms of the usual Bill of Lading, receipt, contract or shipping document of the on-carrier whether issued or not including, but without limiting the generality of the foregoing, any valuation of the goods, or limitation of liability, or exemption from liability, or the requirement for notice of claim or commencement of suit, even though such terms be less favourable to the Shipper than the terms of this Bill of Lading, whether known to the Shipper or not, even though exempting the on-carrier from liability for negligence. Unless the value of the goods is declared at the time of shipment hereunder and is stated herein, and extra freight as may be agreed upon is paid by the Shipper, Consignee, and/or Owner of the goods, the Carrier shall in no event be obligated to declare to the on-carrier any valuation of the goods, even though the on-carrier's Bill of Lading, receipt or shipping document contains a valuation or limitation of liability less than that contained in this Bill of Lading. In the event of any impediment whatsoever existing to prevent the goods being forwarded, they will be detained at the sole risk and expense of the Owners of the goods and forwarded as opportunity offers.

IV. The vessel shall not be responsible for any loss, damage or delay or other consequences caused by hostilities or suspension or delay of the service of the on-carrying vessels or conveyances from any cause whatsoever and all expenses thereby incurred including storage and other charges shall be borne by the Consignees of the goods, the vessel or the subsequent Carrier having a lien on the goods for the same.

V. This contract shall have effect as a contract with the Owner of the ship carrying the goods if the Owner is a member of the Conference. If, however, the Owner of the ship carrying the goods is not a member of the Conference, this Contract shall have effect as a Contract with the Charterer of the said ship.

VI. In the event of suit being brought in the United States of America, this Bill of Lading shall, in respect of periods of the Carrier's custody of the goods prior to loading on or after discharge from the ship, be governed by the provisions of the carriage of Goods by Sea Act of the United States, approved 16th April, 1936, and if anything herein contained in reference to the said periods shall be repugnant to the said provisions it shall to the extent of such repugnancy but no further be null and void.

FINALLY IN ACCEPTING THIS BILL OF LADING. the shipper, Consignee, and/or Owner of the goods, and the Holder of this Bill of Lading expressly accept and agree to all its stipulations, exceptions and conditions whether written, printed, stamped or incorporated, as fully as if they were all signed by such Shipper Consignee, Owner or Holder.

A. K. B.—2000—3-69.

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EXHIBIT 9

LAWYERS' & MERCHANTS' TRANSLATION BUREAU

Carl V. Bertsche (*Translating Service Bureau*) Wm. Bertsche, J.D., CH.E.
Est. 1908
11 Broadway, New York, N.Y. 10004

Certificate of Accuracy

TRANSLATION
From Greek

STATE OF NEW YORK
COUNTY OF NEW YORK } s.s.:

On this day personally appeared before me GEORGE VANSON who, after being duly sworn, deposes and states:

That he is a translator of the Greek and English languages by profession and as such connected with the LAWYERS' & MERCHANTS' TRANSLATION BUREAU;

That he is thoroughly conversant with these languages;

That he has carefully made the attached translation from the original document written in the Greek language (on the official paper of the LAWYERS' & MERCHANTS' TRANSLATION BUREAU); and

That the attached translation is a true and correct English version of such original, to the best of his knowledge and belief.

George N. Vanson

SUBSCRIBED AND SWORN TO BEFORE ME
THIS JAN 31 1973

LENORE KANTOR
Notary Public, State of New York
No. 41-7155130 - Queens County
Cert. Filed in New York County
Term Expires March 30, 1974

Barbara Lenard

BARBARA LENARD
Notary Public, State of New York
No. 60-7480910 - Westchester Co.
Certificate filed in New York County
Term Expires March 30, 1974

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from: Greek

OFFICIAL GAZETTE

OF THE KINGDOM OF GREECE

Athens, February, 15, 1958 PART TWO Issue No. 42

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MINISTERIAL RULINGS AND APPROVAL ORDERS

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(Text of Item 4 commencing on p. 340 and ending on p. 343 of the official Gazette.)

No. 223/13 (4)

Re; Approval of the terms by which the Cargo Ship "NICOLAOS S. EMBIRICOS", presently under construction, is to be governed upon being registered under Decree Law 2687/53.

Mindful of the application, dated January 2, 1958, filed by "COMPANIA NAVIERA EPSILON, S.A.", a company domiciled in Panama, whereby it is requested that Hull No. 1261, of a

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capacity of approximately 6100 gross register tons, presently under construction at the Cammell Laird Shipyard in England, be registered under the provisions of Decree Law 2687/53 "to provide for the investment and protection of foreign capital" as a Greek ship to be named the "NICOLAOS S. EMBIRICOS".

In view of:

a) Section 13 of Decree Law 2687/53 "to provide for the investment and protection of foreign capital", in conjunction with paragraphs 2 and 3 of Section 3 of the same Decree Law;

b) Decree Law 2928/54 "to provide for authoritative construction of Section 13 of Decree Law 2687/53 "to provide for the investment and protection of foreign capital; and

c) Advisory Opinion No. 513, dated May 7, 1955, rendered in plenary session by the State Council of Legal Advisers,

WE, MINISTERS OF

COORDINATION, MERCHANT SHIPPING AND FINANCE

Rule as follows:

We approve the request that the cargo motorship to be named the "NICOLAOS S. EMBIRICOS", presently under construction at the Cammel Laird Shipyard in England and described in the application made by the parties concerned as having a capacity of approximately 6100 gross register tons, shall, on and after hoisting the Greek flag, be governed by the provisions then in force, as supplemented or amended by the clauses hereinbelow set forth, which shall be applicable during the entire period the ship remains under the Greek flag and shall

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supersede any contrary provisions of law then in effect, the ship being considered as foreign capital, witnin the meaning of Decree Law 2687/53 "to provide for the investment and protection of foreign capital" even if owned by aliens.

1. The shipowners shall have the right and be at liberty to change the ship's flag, sell, mortgage and charter her without the permission or approval of any Greek authority to aliens who are nationals of countries of North or South America, the British Commonwealth, Spain, Portugal, Belgium, Holland, Sweden, Norway, Finland, Denmark, Italy, France, Turkey, Egypt, Liberia, Ethiopia, Israel, Yugoslavia, Switzerland, the Principality of Monaco, Luxemburg, West Germany, North and South Africa, Pakistan, India, Japan, Iceland, Morocco, Lebanon, Panama and the Sudan, as stated in the application of the parties concerned.

In the event of a change of the ship's flag, cancellation of the ship's Greek registry shall be required of the Greek Government Services upon the written declaration of the shipowners to the Ministry of Merchant Shipping or any salaried Greek consular or shipping official abroad, provided that along with the declaration certifications of the respective Greek Government Services are submitted proving payment in full of taxes due or chargeable to the ship up to the date of change of flag and of contributions to the Merchant Marine Insurance Funds and the War Risks Insurance Association or, in lieu thereof, there is deposited a letter of guaranty in the sum of 10,000 pounds sterling or the equivalent thereof in dollars issued

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by one of the banks in England or the United States, in which case the official of the port of registry shall be required to issue a certificate of cancellation of the ship's Greek registry. In any case, the shipowners' representative in Greece shall be held responsible for the liquidation and settlement of any such indebtedness outstanding on the date of change of flag, the shipowners being required to make known to the Ministries of Finance and Merchant Shipping the name and home address of their representative in Greece and to keep them advised in the event of his replacement.

2. The shipowners may freely dispose of the foreign exchange acquired from the sale of the ship or from any insurance indemnity which has become due as a result of a casualty or any other cause or from a loan secured by a mortgage on the ship and they shall not be required to import into Greece the foreign exchange so acquired. Foreign exchange mortgagees shall have the same rights, the Bank of Greece being required to permit the exportation abroad of any amount of foreign exchange devolving to them as mortgagees of the ship.

3. All the ship's income and profits, generally, shall be freely managed and disposed of and shall not be subject to any restriction of the laws of Greece or any other provision.

4. The ship shall not be requisitioned except in the event of a general international conflict in which both the Great Powers and Greece have become involved. In such case, however, the ship shall not be requisitioned prior to the

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formal declaration of war by Greece, and shall be released immediately after the termination of the war by Greece, provided that such arrangements are permitted by the international obligations subscribed to by Greece.

5. The compensation payable in the event of requisition, as provided in the preceding Clause No. 4, shall be payable in advance and at the beginning of each month in foreign exchange on New York or London, as the shipowners may choose, and shall be equal at least to the compensation payable for the same cause by the U,S. Government for U.S. Ships of the same type, age, construction and capacity. If there are no U.S. ships requisitioned by the U.S. Government, the compensation payable shall in no case be less than the compensation payable by the British Government to requisitioned ships under the British flag. During the period of requisition the ship shall be managed by the shipowners or their representatives appointed for this purpose. They, however, shall not have the right of intervening in matters pertaining to the use or assignment of the vessel in general.

6. The ship shall be insured by the owners as they may freely decide, even for the period she is under requisition by the Greek Government, and no provisions to the contrary in any subsequent law may affect the operation of this Clause.

7. The ship may be seized by the Greek Government for any reason or cause whatever, except in the case of indebtedness of the shipowners arising out of the ship herself.

8. With respect to the entire crew and regardless of

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capacity, the use of Greek seamen not possessing the qualifications prescribed by law or even foreign seamen shall be permitted in instances where it is manifestly difficult to find suitable and competent Greek seamen readily or in instances where terms other than those prescribed by the laws of Greece, particularly terms relative to the wage scale, are being demanded by Greek seamen.

More specifically as regards engine room officers and lower crew, because of the nature of the ship's engines, the shipowners shall have the right, during the first three years from the registration of the ship, to engage as part of the ship's normal complement, in their sole discretion, either Greek seamen not possessing the qualifications required by law or foreign seamen in derogation of the provisions of Decree Law 2651/53 "to provide for the manning of Greek ships" and the Royal Decree of the 14th April, 1954 relative thereto or any other contrary provision of law.

The irregular manning of the ship under the foregoing conditions shall not confer upon the Seamen's Pension Fund the right to assess and collect penalties or contributions.

Nor shall vacancies in the ship's complement, if any, confer upon the Seamen's Pension Fund the right to assess and collect wages and maintenance plus contributions for the crew vacancies, so long as the numerical complement is restored within a maximum period of three month and regardless of where the ship is plying her trade, with Greek seamen available on

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the terms and conditions of the provisions of law in force governing the manning of Greek ships.

The subject ship may employ foreign seamen in excess of its normal complement without payment by them or by the shipowners of contributions to the Seamen's Pension Fund and the Merchant Marine Welfare Funds.

9. The shipowner's contribution to the Seamen's Pension Fund may not be higher than 9% of the wages paid to the Greek members of the crew and to the foreign nationals who have signed articles of employment in positions forming part of the normal crew complement. The obligation of the shipowners to pay the above-mentioned contribution to the Seamen's Pension Fund shall commence, with respect to the foreign crew members, after they shall have completed three months of service on board. The aforementioned maximum rate of contribution shall in no case be increased.

10. Both the initial and all other periodic or supplementary surveys shall be deemed properly carried out, provided that they have been conducted by one of the following classifation societies: Lloyd's Register of Shipping, Bureau Veritas, American Bureau of Shipping, Germanischer Lloyd, Japanese Marine Corporation, Norske Veritas and Registro Italiano Navale, and the relevent certificate has been issued to the vessel. The time for such surveys to be carried out shall be arranged directly between the shipowners and the classification society concerned, always within the time limits established by the

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the international conventions pertaining thereto.

With regard to the vessel, they shall be acceptable to the Greek authorities, provided that they have been carried out under the supervision of any one of the above classification societies.

11. All the ship's measurements taken by any of the foreign classification societies referred to in the preceding proviso or by the competent government authorities of the nationality thereof shall be acceptable as valid and binding without any further formality, provided that they have been taken in accordance with the regulations in effect in Greece for the measurement of merchant vessels or in accordance with foreign regulations recognized by Greece and on the basis thereof the competent Greek government agency shall issue a certificate of measurement.

Specifications for the hull, machinery and crew's quarters shall be acceptable, provided that they comply with the regulations of the British Ministry of Transport or the United States Coast Guard, as confirmed by the respective certificate which must be kept on board.

12. As regards taxation of the ship, during the entire length of time she remains under the Greek flag, the respective provisions of Decree Law 1880/51 "to provide for taxation of ships", as presently in force, and Decree Law 3415/55" to amend certain provisions of Decree Law 1880/51, etc." shall be applicable. Any eventual increase by a subsequent law in the tax

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rates prescribed by the above-mentioned provisions of law shall not apply to the subject vessel, but any decrease therein shall apply thereto as well.

The ship's five-year period of tax exemption under Section 2 of Decree Law 3415/55 as a ship under construction, shall commence from the beginning of the first voyage under the ship's first fixture under the Greek flag, a declaration concerning which (fixture) is to be submitted by the shipowners' representative in Greece to the Ministries of Finance and Merchant Shipping, together with an extract from the ship's logbook as other evidence in writing of the first voyage.

13. The shipowners, or in the event the ship is owned by a Greek or foreign corporation or private limited company or any other type of association, the shareholders of members thereof shall be exempt from any tax on the income, that is to say: the net income, derived from the profits from operating the ship or from dividends from the founders' stock certificates or the shares of the company owning the ship, of which they are the bearers or with respect to which they are registered, these obligations being covered by the tax on the ship prescribed under the preceding proviso which tax in like manner also covers the capital gain, if any, which may arise from the sale of the ship or from the proceeds of insurance thereon, distributed either as a dividend or as capital gain on the share upon dissolution of Company. It is self-evident that same exemptions also apply to the first five-year period during which the ship

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is exempt from all taxation. The shipowners shall likewise be exempt from any collection of contributions for fund raising purposes and any special tax, irrespective of the need necessitating such measures.

14. In the event of sale of the ship in its entirety, or any undivided portion thereof, to Greeks or aliens, whether natural persons or legal entities, while it is still under the Greek flag, the shipowners shall be exempt from all taxes or fees attaching to the transfer of title, other than those provided by Section 4, para. 1, of Decree Law 3415/55, which provisoins, however, shall apply to the ship as presently in effect.

The provisions of para. 3, Sec. 20 of Law 2246/52 which are still in effect by virtue of Sec. 4, para. 2, of Decree Law 3415/55 regarding exemption from the tax etc. on transfer of vessels as investments in shipping companies shall likewise be applicable.

15. With respect to any contract and other acts and formalities required to document the ship under the Greek flag and the entry thereof in the registry of shipping, generally, carried out in compliance with the formal requirements of law, with respect to the granting of the right to record ship mortgages and the drawing of mortgage agreements or the recording of mortgages in the respective records and their deletion therefrom, as well as with respect to any transfer of the ship as an investment in a Greek corporation and, generally, with respect to the formation of such corporation, the shipowners

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shall be for the entire length of time the ship remains under the Greek flag, exempt from stamp duties and from any assessment, generally, withholdings in favor of third parties, as well as from fees for drawing up formal instruments.

16. The shipping enterprise in any form, formed, or to be formed, for the subject vessel, may state its funds in pounds sterling or U.S. dollars and keep its accounting books and prepare its financial statements in the same foreign currencies. The stock certificates of the shipping corporation formed, or to be formed for the vessel may be issued to "bearer" this privilege to be retained even if at any future time it should be required by law that the aforesaid bearer stocks be converted to registered stocks. The stock certificates of the corporation formed or to be formed for the subject vessel may be freely exported for sale or for any other reason and may likewise be imported into Greece from abroad.

17. The shipowners are exempt from any obligation to pay to the Social Security Agency taxes on the earnings of employees of any contractor or repair yard undertaking to carry out repairs to the ship, with respect to which employees such contractor or shipyard shall be deemed to be the employer.

18. The ship may be encumbered by a preferred mortgage to the builders granted abroad pursuant to instruments duly executed abroad before a notary public. The ship may also be encumbered by preferred mortgages to any other foreign company or bank or foreign natural person and in any amounts of money.

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Loans to the shipowners or claims arising out of contracts to grant them credits may also be secured by preferred mortgages. Copies of the contracts concerning the aforementioned loans and mortgages and of any other contract pertaining to the granting of credits secured by a mortgage or assignments entered into in connection the above matters, with an official translation into Greek, shall be filed upon registration of the ship under the Greek flag or else when they are entered into at the competent Greek Ship Morgage Office, in the mortgage register of which the aforementioned mortgages shall be simultaneously recorded together with mention also of all the aforesaid contracts relative to claims secured by mortgage. As regards the aforesaid loans, contracts to grant credits, mortgages and any assignments made, all the terms and conditions included in the abovementioned contracts already entered into or to be entered into in connection therewith shall apply and be enforced. More specifically, the mortgagees may, in the event of default and in accordance with the terms and conditions incorporated in the respective agreements, without judicial intervention and without any obligation to render any accounting in court, and furthermore, without any liability for any loss to the shipowners, even though such loss may be attributed to fault of the mortgagees, either take over immediately the management of the ship for the purpose of setting off against their claims the net proceeds earned therefrom or sell the ship on behalf of the shipowners for the same purpose, either by public auction

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or otherwise, without adhering to any procedure prescribed by law, under such terms and conditions and for such consideration as they may freely designate. The instruments embodying such loans, assignments or mortgages as above shall be enforceable in Greece without requiring embodiment in a writ of execution. Mortgagees may assign to any third party their rights and obligations in whole or in part as outlined in this approval order as well as authorize any persons to exercise these rights acting in such capacity and by such authority as the mortgagees may designate and they shall retain all their rights arising out of these contracts against any third parties who may acquire the title to or take over the operation of the subject vessel. Preferred mortgages shall have priority over any maritime or other liens in derogation of the provisions of Section 239 of the commercial Code or any other provision of Greek Law in Force at present or in future, with the sole exception of those liens covered and recognized by the International Treaty of Brussels (1926) "To Unify Certain Rules Relating to Maritime Liens and Mortgages". The Mortgage shall be security for the payment of any sum which the mortgagees are entitled to receive from the shipowner under a contract for the granting of credit or otherwise, plus interest thereon from the time the mortgagor makes use of the credit until full repayment of any sum which the latter may receive under the respective contract plus expenses as these latter have been or may be stipulated between the mortgagee and the mortgagor, in derogation of Section 248 of

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the Commercial Code, or any other existing provision of Greek law.

19. Any disputes between the shipowners, any mortgagees and the Greek Government arising out of the enforcement of the present approval order shall be settled by arbitration conducted by 2 (two) arbitrators with specialized knowledge of and experience in shipping matters, one of whom shall be appointed by the Greek Government and the other by the shipowners or by the mortgagees, accordingly, if the dispute being considered concerns the latter. In the event that the other one of the parties hereto, who has been called upon by the one proceeding to arbitration to appoint an arbitrator, should delay beyond twenty days in appointing an arbitrator, the latter shall be appointed by the Greek Chamber of Shipping at the request of the party proceeding to arbitration.

In case the arbitrators fail to agree, an umpire shall be appointed by them and in case the arbitrators fail to agree on an umpire, the latter shall be appointed by the Baltic Exchange at the request of either of the parties concerned and he shall be a person well known for his knowledge of any experience in shipping matters. The same shall apply in case no suitable arbitrator is found.

The arbitration award shall be final, irrevocable and enforceable and shall not be subject to any ordinary or special legal proceedings nor to any recourse or petition to any regular or administrative court to set it aside and it shall be

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enforceable without requiring embodiment in the form of a writ execution.

No stay or postponement of the enforcement of the arbitration award or of the rest of the procedure shall be permissible.

20. If another ship, of the seagoing dry cargo or tanker class, registered in future under the Greek flag pursuant to Decree Law 2687/1953 should be granted more favorable terms than those herein set forth, such more favorable terms shall be extended by way of supplementing the present approval order and shall apply to the subject ship in whole or in part, entirely at the discretion of the shipowners, if so requested by them, with the consent of the mortgages, if any, or by the latter acting entirely at their own discretion.

The shipowners also reserve to themselves the right to request by further application, that additional exemptions or facilities be extended to them which, if agreed to, shall be granted by amending or supplementing the present approval order accordingly.

21. The clauses of this approval order shall continue in force even if title to the ship should be transferred, either before or after her registration, to other Greek or foreign nationals, whether natural persons or legal entities, in compliance with the restrictions of Clause I as to the nationality thereof.

Exhibit 9

TRANSLATION

from: Greek

Piraeus, January 31, 1958

Minister of Coordination
Dimitrios Helmis

Minister of Finance
Ch. Thiveos

Minister of Merchant Shipping
S. Kotiadis

LAWYERS' & MERCHANTS' TRANSLATION BUREAU
Carl V. Bertsche (Translating Service Bureau) Wm. Bertsche, J.D., Ch. E., A.C.S.
Est. 1908
PHONE (212) 344-2930-1 11 BROADWAY, NEW YORK, N. Y. 10004

EXHIBIT I

PERFECT, LAMBERT & Co
R. S. ROWE, O.B.E. L. W. F. MATTHEWS
R. E. SHERRIFF

LONDON,
REFRIGERATED PRODUCE SURVEY DEPT.,
121-123, CHARTERHOUSE STREET, E.C.1.
Telephone, 01-253 6696.
GENERAL SURVEY DEPT.,
RIVER HOUSE, 119-121, MINORIES, E.C.3
Telephone, 01-709 9644.
Telegraphic Address MARSURVEYS, LONDON, E.C.3

LIVERPOOL,
REFRIGERATED PRODUCE SURVEY DEPT.,
219, ROYAL LIVER BUILDING.
Telephone, 051-236 9001.
GENERAL SURVEY DEPT.,
235-237, ROYAL LIVER BUILDING.
Telephone, 051-236 6547.

GLASGOW,
366, CENTRAL CHAMBERS,
93, HOPE STREET,
Telephone, 041-221 1724.

And at AVONMOUTH, SOUTHAMPTON.

OUR REF. CS.3883/PL/CB

YOUR REF. DSJ/VH

River House,
119-121, Minories
London, E.C.3 3rd July, 1969

MANAGER AND AT LLOYDS

RECD.

"NICOLAOS S. EMBIRICOS"
I.M.O.
6,117 Long Tons General Cargo
ACCTS.

The Salvage Association
Lloyds Building,
London.E.C.3.

Dear Sirs,

In accordance with instructions received we attended on board the motor vessel "NICOLAOS S. EMBIRICOS" stranded on Suvadiva Atoll, Maldive Islands, Indian Ocean between the 1st June 1969 and 28th June 1969 to investigate the cause and circumstances of her stranding.

* * *

No records were kept by the Salvors as to marks and B/L's jettisoned and only approximate tonnages known. There were no B/L's on manifest on the casualty and generally there appeared to be very few cargo documents on board.

We arrived at Addu Atoll, R.A.F. base GAN on 1st June and after unsuccessful attempts to acquire transport from GAN to Suvadiva (a distance of 95 miles) we managed to make radio contact with the ORINOCO which tug collected us from GAN. We arrived at Suvadiva at dusk on the 2nd June. During the time the ORINOCO was away, the Salvage tugs ELBE and SVITZER stood by the casualty.

3rd June. We boarded the casualty in conjunction with:-

Captain E. Koutsoucos (of the "NICOLAOS S. EMBIRICOS")
Captain A. Vink (General Manager of L.Smit & Co.)
Mr. B.F.Mees (Salvage Inspector ")

and the Master of the three Salvage Tugs to carry out a general inspection.

Exhibit I

These calculations were also checked independently by the Chief Mate of the tug ORINOCO at our request with the following results:-

Intercept at 0802/14th.	Noon D.R.@ 230°T x 13½ knots	
Capt.Kousoucos 17' towards Sun bearing 070°T		75°06'E
Ourselves 16.7' " " " "	02°44.9 N	75°05.9E
Ch.Mate ORINOCO 16' " " " "	02°43'N	75°03'E

The corresponding noon positions were as follows:-

Capt.Kousoucos	Lat. 02°36' N.	Long 75°06'E
Ourselves	Lat. 02°36' N.	Long 75°07½ E
Ch.Mate ORINOCO	Lat. 02°35½'N.	Long 75°05½ E

It will be seen that all three positions are basically the same, any differences being due to personal interpolation of the tables used and we feel the noon position/14th May as calculated on the "NICOLAOS S. EMBIRICOS" to be correct.

The Master then set course from the noon position 233°True, 235°Gyro to a position 15' north of Huvadiva Atoll and calculated that he would be at this position at 2345 hrs. L.M.T./14th at which time he altered course to 247°True, 249°Gyro (allowing the 2°High Gyro enor)

At no time was any allowance made for current or leeway, despite the fact that the British Admiralty Current Atlas for the Indian Ocean Month of May, shows a very strong E.ly set (Copy of this Atlas on board the "NICOLAOS S. EMBIRICOS".

This fact is also substantiated by the United States Hydrographic Publications:-

Atlas of Surface Currents - Indian Ocean Month of May.
Department of Navy - "Range 27.1 miles to 45.4 miles per day
E'ly to Exs. direction and U.S. H.O. Pub. No.107 Month of May

SURVEY REPORT—Continued

We found the casualty to have an 18" List to starboard, Draught Forward 25'8" and that lower holds Nos. 1, 2 and 2A (3) were tidal and that for the most part, the cargo in these spaces was immersed in water. As the draught forward was increasing daily we agreed with the aforementioned that the fore section must be "digging" into the coral with the continued "working" of the vessel. The range of tide at this time (Spring Tides) was four feet.

We also noted water in the low side of the tween decks in the same hatches.

After some discussion it was generally agreed that owing to the List of the casualty, the continuous heavy swell and the complete lack of any shallow water to anchor, that it would be impossible to moor or anchor coasters or barges adjacent to the "NICOLAOS S. EMBIRICOS" to discharge cargo.

The difficulties being aggravated by the total lack of facilities in the atoll, indifferent native labour no barges and no harbour for loading a coaster from barges and no covered space on the islands in the Atoll and the distances involved in towing small craft (if these were available) to either R.A.F. GAN 95 miles away or, to Male Anchorage 210 miles away to the North, it seemed unlikely that any cargo could be discharged or saved whilst the casualty was stranded at Suvadiva.

It was then decided that the only hope of saving any cargo, or part of the casualty was by blasting the bottom of the casualty forward of No.3. deep tanks and cutting the tween deck, main deck and bulwarks and thus salvaging the after part of the vessel.

No discussion, however, could be taken at Suvadiva and the decision to attempt this difficult and risky operation was left to the interested parties in London (Rotterdam) New York.

On the morning of the 3rd June we switched on the casualty's gyro. We waited until the gyro had "settled" down and then took a number of gyro errors during the course of the afternoon. (See Navigational Equipment details). We also switched on the radar at this time. A.M. Draught 25'8"F 25' 0'A. List 17½° starboard. Head 265½°C. P.M. Draught 29'5"F 23' 0'A. List 18° starboard.

* * *

SURVEY REPORT—Continued

NAVIGATIONAL EQUIPMENT REPORT

Gyro Compass. Sperry Mk 14E Model 30

Last serviced in Glasgow in February 1969. Regular gyro errors taken by Officers on watch.

We examined the Gyro on the 3rd/4th June, prior to switching on and found the compass to be in apparent good working order. The compass "settled" in the customary time and without incident. We took a number of gyro errors over a two day period and found the error to range from 2½°High to 3°High. These errors were in keeping with three errors taken on passage from Colombo to the Maldives and throughout the earlier part of the voyage i.e. on passage to the Maldives three errors were recorded as 2.2°H, 2.6°H and 2.7°High, and on perusal of the compass deviation Book (which was well kept) we found that in general the error of the gyro tended to be in the range 2-3°High. Our observations/errors were also checked independently by the Master of the tug ORINOCO.

Course Recorder.	Sperry Mk. 14E. In apparent good order.				
Auto Pilot.	Sperry Mk. E.V Model 0	In apparent good order.			
Wing Repeaters.	Sperry	"	"	"	"
Echo Sounders.	Marconi Seagraph Type 840"	"	"	"	
	Marconi Seavise Type 841 A	"	"	"	

The echo sounders were not in use at the time of stranding but would in any event have been of little value as the water shoaled from no bottom to coral reef extremely rapidly. They were, however, reported to be in good order but we were not able to verify this fact owing to the grounded condition of the "NICOLAOS S. EMBIRICOS"

Ro. D.F. Marconi Type 758 E. In apparent good order.
The most up to date calibration chart for this instrument was dated 19.5.58.

RADAR Marconi Radiolocator IV Type 1412 A.
We switched on the Radar and, after 7 hours continuous running on a very hot day, were still receiving a clear picture/echo from the reef and islands in the atoll at a range of 13½/15 miles.

Exhibit I

This instrument was not switched on at the time of grounding and we asked the Master why this was so. He replied that the Radar had performed in a very unsatisfactory manner for some time as the picture faded when the ship was pitching. The Radar was last repaired in Chittagong in April/May 1969. The Master further advised us that he had no faith in the Radar. It was also reported that the O.O.W. had been instructed not to use the Radar, we were, however, unable to confirm this report.

STANDARD & STEERING COMPASSES Kelvin Hughes 10" Dry Card.
The most up to date deviation card that we were able to find for these compasses was dated 19th May 1958. This fact has no actual bearing on the stranding.

CHARTS. All relevant charts had not been connected since first put aboard the vessel in 1958. This fact had no bearing on the actual stranding.

We attach hereto a list of all relevant documents, charts and books that were removed for safety to the ORINOCO and which we instructed Captain Koutsoucos to preserve for evidence.

NAVIGATION

We discussed the navigation of the "NICOLAOS S. EMBIRICOS" on numerous occasions with Captain Koutsoucos who was most co-operative and who made his observation book and c lations available for our inspection.

We ascertained that Captain Koutsoucos had experienced no current and set when outward bound from Lourenco Marques to Colombo and that his main worry had been in his view the danger of grounding on the North Side of the One and Half Degree Channel.

The Master further informed us that he took all sights and observations and that all the necessary calculations were then made by himself and checked independently by the 2nd Mate. He habitually took a set of 4 sights on each occasion when taking observations.

We examined his observation book and chronometer rate book (the latter being well kept and up to date) and we then calculated the Intercept and Position Line by the Marq St.Hilaire method from the Master's 0802/14th observations/altitudes and the noon position/14th May from the Master's observed meridian altitude and transferred position line.

SURVEY REPORT—Continued

No.2603. Pilot chart of the Indian Ocean, neither of which publications on board.
The British Admiralty Pilot - West Coast of India also states on page 67 that "In Nov.1939 a 2½knot current setting Eastward was experienced. In October 1960 a current of 1½ to 3½ knots was observed"
Further, on page 56 line 25:
"At night, a vessel should only pass through the four larger channels between the Atolls and not even through these unless the entrance has been made before dark or unless the latitude is accurately known"

A copy of the abovementioned publication was on board.

We also noted that although the Master calculated he was clear of the One & Half Degree Channel at 2345 hrs, allowing 12 knots from noon, the "NICOLAOS S. EMBIRICOS" did not run aground until 0122 hrs. L.M.T./15th May.

This discrepancy in time meant that either

(a) The Master had miscalculated his position at 2345 hrs.

(b) The vessel encountered a strong E'ly set.

We had already verified (a) and (b) and found these calculations to be correct and it seemed highly probable that the vessel stranded as the result of a strong E'ly set. This possibility was further confirmed by the Master of the tugs ORINOCO and SVITZER who had, on numerous occasions reported strong E'ly sets, particularly in the entrance to the One and Half Degree Channel and we had also noted the E'ly set ourselves.

CONCLUSION

It would seem probable that the "NICOLAOS S. EMBIRICOS" ran aground as a result of a strong E'ly current (more precisely E.S.E. 1.8 knots over a 13½ hour period) and not as a result of defective Navigational Equipment.

Exhibit I

In our opinion:

(1) The angle of approach to the One and Half Degree Channel was imprudent as this effectively manoevered the channel from a safe width of 52 miles to a safe width of 28 miles and exposed the vessel to the full force of any current.

(2) The vessel should not have been navigated through an un-lit channel in the circumstances of darkness and uncertain position and unknown currents and set

(3) The Radar should have been at least tried to see whether any picture was obtained

(4) The W.S.W. and S.W. winds recorded in the Log Book could have had some effect on the course of the vessel as the wind was fractionally on the starboard bow.

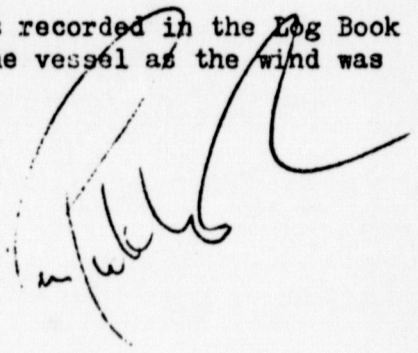


EXHIBIT Q

ROYAUME DE GRECE
MINISTERE DES AFFAIRES ETRANGERES
BUREAU DE TRADUCTION

No 16275

KINGDOM OF GREECE
MINISTRY OF NATIONAL ECONOMY
MARITIME EMPLOYMENT OFFICE

Protoc. No. 3472

C E R T I F I C A T I O N

1.- It is certified that as is deduced from the catalogues kept by us of unemployed seamen, during the period 1/1/1969 till 31/5/1969 there were registered unemployed seamen of the third class captains specialty.

2.- There was not submitted to our service during the above period an application by the shipowning at the time company of the M/V NIKOLAOS S.EMBIRIKOS Registered in Andros under No277 of a total cpacity 8460 surfeits, for the disposal for enlisting qualified of Second Mates.

The present is issued at the request of the attorney lawyer Nikolaos K.BALTAZANIS, for judicial use.

At Piraeus 20/3/1973
The Director
signed.: Spyridon Barkis
rubber seal of the Office.

True translation from the attached Greek original (photocopy).
The translator : Costa Papakyriakou.
Athens 12/4/1973.

Exhibit Q

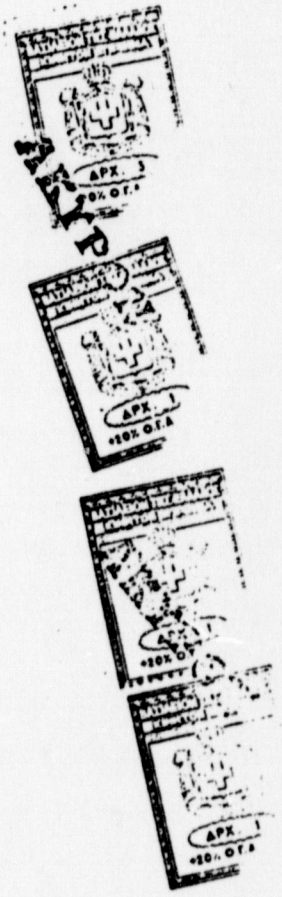
ROYAUME DE GRECE
MINISTERE DES AFFAIRES ETRANGERES
№

Vu pour la légalisation de la signature
C. Papaconstantinou

24 AVR. 1973

LE DIRECTEUR DU MINISTERE

A. ZERVOPOULOS
DIRECTEUR



328 a

Exhibit Q

ΒΑΣΙΛΕΙΟΝ ΤΗΣ ΕΛΛΑΔΟΣ

ΥΠΟΥΡΓΕΙΟΝ ΕΘΝΙΚΗΣ ΟΙΚΟΝΟΜΙΑΣ

ΓΡΑΦΕΙΟΝ ΕΥΡΕΣΕΩΣ ΝΑΥΤΙΚΗΣ ΕΡΓΑΣΙΑΣ

Ἀρ. Πρωτ. 3472

ΚΑΤΑΤΕΘΗ ΚΑΤΑΦΕΤΑΙ

ΑΡΧ. Ι ΕΙΣΟΔ. Ο.Γ.Δ.

Β Ε Β Α Ι Ω Σ Ι Σ

1.-Βεβαιοῦται ὅτι, ὡς προκύπτει ἐκ τῶν παρ'ἡμῖν τηρουμένων καταλόγων ἀνέργων ναυτικῶν, κατά τό χρονικόν διάστημα ἀπό 1/1/1969 ἕως 31/5/1969 ἐφέροντο ἐγγεγραμμένοι ἄνεργοι ναυτικοί τῆς εἰδικότητος πλοιάρχων τρίτης τάξεως.

2.- Εἰς τήν ἡμετέραν ὑπηρεσίαν, δέν ὑπεβλήθη κατά τήν ὡς ἄνω χρονικήν περίοδον αἴτησις ὑπό τῆς πλοιοκτητρίας τότε ἑταιρείας τοῦ M/V ΝΙΚΟΛΑΟΣ Σ.ΕΜΠΕΙΡΙΚΟΣ Νηολογίου Ἄνδρου 277 ὁλικῆς χωρητικότητος 8460 κόρων, διά τήν διάθεσιν πρός ναυτολόγησιν προσοντούχων Ἀνθυποπλοιάρχων.

Ἡ παροῦσα χορηγεῖται τῇ αἰτήσει, τοῦ πληρεξουσίου δικηγόρου Νικολάου Κ.ΜΠΑΛΤΑΖΑΝΗ, διά δικαστικήν χρῆσιν.-

Ἐν Πειραιεῖ τῇ 20-3-1973

Ὁ Διευθυντής

Σπυρίδων Μπάρκης

ΑΡΧ. Ι ΕΙΣΟΔ. Ο.Γ.Δ.

ROYAUME DE GRECE
MINISTERE DES AFFAIRES ETRANGERES

Ni

pour la légalisation de la signature

du Ministère de l'Economie Nationale

LE 24 AVR. 1973

PAR AUTORISATION DU MINISTRE
LE DIRECTEUR

A. ZERVOPOULOS
DIRECTEUR

Exhibit Q

KINGDOM OF GREECE
PROVINCE OF ATTICA
CITY OF ATHENS
EMBASSY OF THE
UNITED STATES OF AMERICA

SS.

I, Rachel Campbell, Vice Consul of the United States of America at Athens, Greece, duly commissioned and qualified, do hereby certify that, to the best of my knowledge and belief, the signature subscribed to the foregoing documents i. e.

Certificate No. 3472, issued by the Maritime Employment Office of the Greek Ministry of National Economy, Piraeus, Greece; with official translation thereof in English -

the signature of A. ZERVOPOULOS, Chief of Bureau

Ministry of Foreign Affairs of Greece, and that by virtue of said office he is empowered to certify, under the seal of the Ministry of Foreign Affairs of Greece, to the authenticity of the signatures and to the competency of officials of the Greek Government; and that the seal accompanying said signature is the seal of the Ministry of Foreign Affairs of Greece. This Embassy assumes no responsibility for the contents of the attached documents.

Witness my hand and the seal of the Consular Section of the Embassy of the United States of America at Athens, Greece, this 14th day of May in the year 1973

Rachel Campbell

Rachel Campbell,
Vice Consul of the United States of America

Due and timely service of Two copies
of the within APPENDIX is hereby
admitted this 17th day of JUNE 1974

Lord, Day & Lord

Attorneys for DEFENDANTS-APPELLEES
BRUCKLER BANK & TR. CO.

Healy & Baillie

ATTORNEYS FOR APPELLANT EPSILON

FOR DAVID R DAWSON:

BY

Attorney for APPELLANT KRAMER INDUSTRIES